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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

TUESDAY, MARCH 28, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough--Ellesmere L)

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Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park--Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham--York L) for Mr. Callahan

Collins, Shirley (Wentworth East L) for Mr. Ruprecht

Pollock, Jim (Hastings--Peterborough PC) for Mr. Cureatz

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witness:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, March 28, 1989

The committee met at 10:10 a.m. in room 228.

AGGREGATE RESOURCES ACT

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: I would like to recognize a quorum and begin the meeting, please. As the members of the committee are aware, Bill 170 was assigned to the standing committee on general government on the last day of the session, so the ordinary format for scheduling what we will be doing during the two weeks of hearings on Bill 170 had to be negotiated mainly through the critics of the official opposition and the third party.

The week following the bill being assigned to this committee, Bud Wildman, in the case of the official opposition, and Jim Pollock, in the case of the third party, in conjunction with Jack Johnson, David Fleet and myself determined that we would have a briefing by the ministry this week plus presentations by any group or individual that had indicated some sort of interest in addressing in a public forum the Aggregate Resources Act.

With this in mind, as a housekeeping move this morning what I would like to do is read into the record what was decided in those negotiations. The purpose of this is to get somebody to move it and, subject to comment by the committee, to decide that the format we have established for these hearings is in fact going to be followed.

The motion that I propose has five parts to it:

1. That the committee schedule public hearings on the week of March 28, 1989, and commence clause-by-clause on the week of April 17, 1989.
2. That the Ministry of Natural Resources appear on the morning of Tuesday, March 28, 1989, and brief the committee on Bill 170, An Act to revise several Acts related to Aggregate Resources.
3. That the committee not advertise. Instead it should invite groups that have contacted the ministry and the committee to make a presentation, and that the groups be given a half-hour for their presentation.
4. That at the completion of the presentations, the committee will begin clause-by-clause of the bill.
5. That the committee adopt the agenda prepared by the clerk as instructed by the committee.

Could I have somebody move that motion with the five parts?

Mr. Sola: So moved.

Mr. Chairman: Are there any comments on the motion?



Mr. McLean: I am wondering if you have had approval from the official opposition members to proceed with this motion without their presence.

Mr. Chairman: Yes, we have. The clerk was good enough to contact the official opposition. Bud Wildman is fogged in. Mr. Charlton, a member of this committee, is sitting on the standing committee on the Ombudsman down in committee room 2. Marion Bryden is on her way, but the office told us that we should proceed, because of the nature of the meeting. Any other comment?

Those in favour?

Motion agreed to.

Mr. Chairman: The other item I would like to bring up, particularly with respect to this week, is that we are, starting this afternoon at two o'clock, having members of the public and groups from the public in to make presentations. As the chairman, I think it is important that we start promptly at the beginning time. I would like the concurrence of the committee, unless you object otherwise, to start the meetings as soon as we have a quorum so that those presentations can take place at the appointed time. Is there any objection to that? Okay.

As I indicated earlier, the purpose of this morning's meeting—

Ms. Bryden: Excuse me, is there an agenda?

Mr. Chairman: It should be in the book.

Ms. Bryden: Maybe it is. I did not know if there was an update.

Mr. Chairman: The purpose of this morning's session is to get a briefing by the Ministry of Natural Resources. This briefing is going to be headed up by Dale Scott who, I understand, is the resident expert on aggregates. Without any further ado, I will call on Mr. Scott to take the meeting from here on.

#### MINISTRY OF NATURAL RESOURCES

Mr. Scott: We have several handouts that we brought along for members of the committee, a little bit of background. We have got a map which shows the present designated areas and we will be handing that out. We have the word slides that I am going to be using in my presentation. We have photocopied that for your edification as well. We also have a copy of the backgrounder, which gives some indication of the various things that this legislation proposes to do. It also highlights some of the proposed changes that our minister has indicated.

I have a couple of other publications showing what has been done in the past and what the industry is about and is actually doing at the present time. We will be handing those out to you as well. There is another one here on fish and wildlife rehabilitation of pits and quarries. The third publication is the applicant's guide under the Pits and Quarries Control Act. In my presentation I will highlight that a little bit further. This gives some indication of the type of involvement we have with the other ministries as well.

I have designed the presentation in such a way that it may be, with the chairman's concurrence, most acceptable that people ask questions as we go along, because the slides up there may have something on them that I can use to explain the question in a little bit more detail. Is that acceptable to you?



Mr. Chairman: Completely acceptable. In case there are multiple questions, though, anyone wishing to ask a question should catch the eye of the chairman and I will keep it organized from here.

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Mr. Scott: We have prepared a slide presentation for you. We have tried to give in this presentation a little bit of indication of what the aggregate resources of Ontario are all about, how significant they are and what are some of the crucial matters we thought you should be aware of in this presentation.

That is the first half. The second half goes into some of the generic aspects about the new proposed legislation: what has been done in the past, what this new act is going to be able to allow us to do that we are not presently doing and some of the new emphases we are going to be placing on the program as a result of this new legislation.

What are the aggregate resources of Ontario? We consider them to be essential building blocks that allow for the economic wellbeing of Ontario. There are approximately 186 million tonnes of material processed and sold each year. That is about 20 tonnes per capita which is used in Ontario. They include sand, gravel, shale and stone.

I will try to get out of everybody's way.

Mr. Chairman: When you move away from the mike, we cannot hear you, so you are going to have to block off a few people.

Mr. Scott: Okay, I will stay here. We put this shot in. It shows a sand and gravel pit. It is unconsolidated material and, as you can see from the grain size there, it is basically being taken out with a front-end loader. It does not require blasting and removal in that method.

That particular deposit is a very good deposit. It was taken a few years ago. It has extremely good grain size, extremely good quality of the stone and the sand fraction. There are not that many deposits of that thickness of that quality remaining at present. We have used up a lot of those and we are now moving into poorer quality deposits compared to what was being mined maybe 15 to 20 years ago, or they are being mined further away from Toronto.

This map is similar to the map on the wall over there and over there, which shows the sand and gravel deposits. The black-toned areas are the sand and gravel areas in Ontario. You will note that some areas, such as the Windsor and Sarnia areas, do not have very much aggregate. Similarly, up in the Parry Sound area and over towards the Ottawa area, there are areas that do not have very much aggregate of a sand and gravel nature.

Mr. Fleet: Is aggregate available in the United States in places adjacent to, for instance, Windsor, where they do not have much?

Mr. Scott: Yes. There is aggregate in the United States and it is brought in from areas up in there and up along here that do have crushed stone. They are supplying some of the material to the market of Sarnia and Windsor. Also, recently there is a new operation on Manitoulin Island which is now supplying material to the Windsor and Sarnia area as well, at quite a price, mind you, compared to other areas in Ontario.

Mr. Fleet: But still presumably cheaper than if you trucked it from eastern Ontario or even central Ontario.



Mr. Scott: Yes. As a backhaul, they are hauling mainly crushed stone from the Hamilton area to Windsor. They bring grain down from that area and they take gravel back. It is a free trip in essence, so they can get the price down by that method, but otherwise you have to bring it in by ship.

This is a crushed stone quarry to the west of here. As you can see, this material has been blasted. Otherwise, it would have been solid rock and they have to blast it. There is a drill up on the back which is drilling new holes for more blasting in the future and they have much larger equipment, generally speaking, to extract the bedrock resources.

This map shows the bands of stone in southern Ontario that are acceptable for some types of aggregate. Certain deposits are better than others. The one that runs through Niagara Falls, Hamilton and then on up to Collingwood and the Bruce Peninsula is called the Amabel formation. That is the best bedrock, generally speaking, for making crushed stone out of in Ontario.

The Detroit river and other formations to the west that go through Goderich and London and down towards the Fort Erie area are buried under a fair bit of overburden or there are poor-quality inclusions in them such as chert, which makes some of those stone deposits less significant for making crushed stone out of, because they react when you mix them with concrete cement or with asphalt cement. Over in eastern Ontario, there is a blob there that is acceptable for making crushed stone out of as well.

Many of the deposits, both the crushed stone deposits and the sand and gravel ones, have to be processed to a considerable extent. Here is a washing operation: washing the stones and getting the silt and fine clay particles off the stones. You may also have other types of equipment which take out the chert in some of the deposits, such as in the Woodstock area; that is very prevalent down there.

After processing, crushing and screening, you are going to find that there will be many different types of products created. Those products will all have a certain use, and there are some companies in Ontario that can produce as many as 140 different products from a property. Mind you, that is a lot of different blends, but it just shows how significant the different types of materials are and how important they are in a very complex economy like Ontario's, where there are many different things being done with these different particles of material.

One of the major uses is for roadbuilding. In this particular shot, there is a very large asphalt paving machine there, and that particular material being put on the road is a high-specification material, an HL-1, which meets the specification for roads like Highway 401 or the Queen Elizabeth Way. It has also got a very thick layer of gravel underneath that top course. That material all has to come from pits and quarries.

The housing market, as you are all aware, is booming in Ontario and each house uses about 325 tonnes of aggregates and about 55 cubic metres of concrete in the construction of the house. That includes the sidewalk and the driveway, but it shows that there is a very large amount of material going into each new house that is being built.

We have many uses being made of all this material. We have got concrete, as I have talked about. All the country roads in Ontario use aggregates to make the surfaces acceptable for passage throughout the year. Shorelines: For



the Great Lakes as well as along the streams in Ontario we use riprap or armour stone to protect them. Those are just a few of the uses.

Some of the more exotic uses that most people would not think of: The iron and steel industry could not survive without the limestone resource that is used in making the steel. The interlocking stones that many people are using in their backyards now or on their driveways are made from sand and gravel and cement. Even beer bottles are made from the limestone deposits.

Aggregate production in Ontario has gone up very dramatically in the last three years in particular. The only reason that I use these three years is because our data are most accurate for those particular years. We have gone in 1985 from 140 million tonnes to 165 million tonnes in 1986 and in 1987 to 186 million tonnes. We have been going up somewhere in the order of 20 million tonnes a year, give or take. That is a very large increase. It is basically because the economy in Ontario has been booming quite dramatically in the last few years.

In terms of the value at the gate of the product—that is the primary industry area—in 1987 it equalled \$1.6 billion at the gate in direct sales before the trucking was added or before any downstream escalation of the price went on.

In terms of the secondary industry such as the manufacturing of concrete blocks, concrete bricks and many other things like that such as prestressed concrete, there is another \$750 million there. Then in construction where the actual material is used in putting in the foundations for houses, putting in roads—well, not so much roads but other things of that nature such as high-rise buildings in Toronto, it works up to about \$18.3 billion a year directly related to the aggregate and cement components. Then transportation is another \$500 million.

#### 1030

There are about 7,000 people in Ontario directly related to the production of sand and gravel and working in the various pits. There are about 2,700 establishments—that is, pits and quarries—that are operated on a fairly regular basis in Ontario. There are about 250,000 employees downstream, which would be in the construction area as well, directly related to the sand and gravel and concrete industry.

In terms of where we are going and where we have been, we have basically a two-pronged approach with our aggregate management in Ontario. We have the legislation. There is the new Aggregate Resources Act at the present time. The Pits and Quarries Control Act is the key component at the present time. We have the planning policy, the mineral aggregate resource policy statement, which was the first such policy statement in Ontario. In that area, we are trying to plan for the wise use of those resources in the future. We are not here to talk about the planning policy. That is a separate issue altogether and I just want to stress that. The planning policy and the legislation are separate. One is regulatory and one is planning for the future and they are two separate entities.

I am going to show you the policy statement. That is what it looks like. It has some background information in it as to how to use the document in an appropriate manner. We work with the municipalities in long-term planning. That is separate from the legislation.



This shot shows good resource lands in the Preston area, where there is a lot of good gravel off to the south where the houses are. Part of it has been mined out in the foreground and needs some more rehabilitation there. This is not licensed, by the way; this is not under the P and Q act. This is a property that was mined out years ago, but the housing encroached on the resource before they could get the rest of it out, so it is sterilized probably for ever now. That is what the policy statement on planning is trying to overcome so that we do not have that happen in the future.

One of the things we did a few years ago was to undertake a detailed study of the transportation of aggregates. That is one of the problems we are always faced with. It seems to impact on more people. Out of this study, we determined that the best way to proceed was to mine the aggregate as close to the market as possible, but to try to overcome the transportation problems by having appropriate turn lanes, appropriate deceleration and acceleration lanes and many things like that, as well as bypasses if necessary around some hamlets. That was the key essence that came out of that study.

The other part was that this study showed us it is not acceptable and not possible to transport aggregates for great distances from northern Ontario because all you are doing is moving the impacts to some other group of people. It is best we have the haul distance as short as possible because it is the trucks that seem to impact on the most people. If we have the miles the trucks are travelling be the shortest, we are probably going to have the least impact.

Here is a shot of some trucks going off at the property. That is something this new legislation will try to address in a more proactive manner. There is going to be more contact with the municipality and we are going to be able to work out some of these differences and problems as we are designing the system, rather than not being able to do very much about them, as is the situation with the P and Q act.

We have tried to work with the other ministries and other interests in Ontario. We have publications. We have handed one of them out to you. This one shows what we have been doing with the aggregate and the agricultural industries, trying to get them to mesh together so that we rehabilitate the properties back to agriculture where possible. Most of the properties are going back to agriculture, except in the urban fringe area where there are other economic considerations that come to bear.

You also have the copy on the right-hand side of the slide; that is, for fishing and wildlife and rehabilitation, we are trying to encourage more land going back to an after-use that will be in keeping with the natural environment as much as possible. In northern Ontario, we have been encouraging rehabilitation of the properties there in a way that is going to allow that land to go back to forestry or some other use.

I have gone through some of the generic aspects about the program. I would now like to move on to the Aggregate Resources Act itself and talk a little bit about what we have been doing. I have to deal with the past a little, because the past indicates how we are going into the future, but I am going to be intermixing it with some of the slides of what we have been doing and showing how the new act is going to either make that better or allow us to do more of that type of thing.

There is at least one member in this room for whom this slide should be dear to his heart. Mr. Ballinger was on the Ontario Mineral Aggregate Working



Party, on aggregate resources, back in the mid-1970s. Out of it came A Policy for Mineral Aggregate Resource Management in Ontario.

Mr. Ballinger: But no legislation.

Mr. Scott: I cannot comment on that.

Mr. Fleet: A problem soon to be remedied.

Mr. Scott: What we hope you will agree with is that we tried to take the good recommendations that came out of that committee. That committee was widespread in its mandate and was widely based in terms of who was on it. There were a lot of different people from the municipalities and from various interest groups. We feel that even though it has been 10 or more years since that committee was doing its job, the various recommendations are still extremely appropriate today and will be for many years to come.

We took that as the basis, upon which this legislation has gone forward. We have taken various comments and concerns of interest groups and other parties over the past 10 years, including various submissions that came in eight years ago or so, and integrated those into this new bill which we think captures most of the interests that have talked to us over the years.

There are quite a few concerns and problems with the Pits and Quarries Control Act. There is no financial remuneration to municipalities. It has inadequate site plans. There are problems from an environmental standpoint and involvement with the municipalities. Those types of things are not captured the way we think is necessary today.

It is also very difficult to enforce. There are a lot of legal problems with it that we have had to deal with. We have been successful in some and not successful in others. We feel it has been very useful over the years, but its time has been served and we are now at a stage where we think there are new things that should be put into new legislation.

One of the things that is a real problem with the P and Q act is the lack of public trust. I think that is something that has been a real problem with that particular legislation. Because it lacked teeth, we lost the momentum and we were not able to keep making the types of changes that everybody wanted with that legislation.

The new legislation has several purposes. The management of Ontario's aggregate resources in a proactive manner is one of them. We want to control aggregate operations across the province. That means in designated areas, on private land, on crown land, throughout the whole province and under water in the Great Lakes or in the rivers where they are mining it through dredging or drag-lining operations.

We also want to minimize the adverse impacts and effects on the environment. The three pieces of legislation we have today are the Pits and Quarries Control Act, which deals with private land in designated areas, mainly southern Ontario, and the grey tone on that map I handed out is the area that is presently designated; the Mining Act, part VII, which covers quarry permits on crown land, largely in northern Ontario; then there is the Beach Protection Act, which covers mining in the Great Lakes or in rivers.



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Mr. Ballinger: Put that on; then you can walk around wherever you want.

Mr. Scott: There. Is that better?

Mr. Chairman: Now you can wander around.

Mr. Scott: Dealing with the area in grey tone on your map, that is where the Pits and Quarries Control Act is presently in force. Under the new Aggregate Resources Act, that same area would be considered for either licences on private land or wayside permits. Wayside permits are just for municipal or provincial road jobs.

This is a blowup of the same map that you have. The orange area is the same as your grey area and shows the areas that are presently designated. We have Sudbury, Great La Cloche Island and Sault Ste. Marie also designated there.

Mr. Fleet: Perhaps while we have that slide up, Mr. Scott, you could answer one small question I have. There is a pretty clear pattern of where current areas are designated, with the notable exception of the Napanee-Tweed area in eastern Ontario. Is there some reason why that was exempted?

Mr. Scott: That area was designated at one time and this area here was also designated and de-designated, but we have redesignated that area in the last little while. It was basically because the citizens in that area felt they did not want to be designated under the Pits and Quarries Control Act. They voiced their concern and as a result it was de-designated.

Mr. Fleet: Did they say they did not want to be designated because they did not want any control or because they wanted to put in more control, or what was the case?

Mr. Scott: They did not want controls.

Mr. Fleet: Has that been the policy of the ministry, that if a group of citizens said, "We do not want it," it would take it off?

Mr. Scott: I guess in part. There was a problem there, in that at that time it was designated with very little comment from local municipalities and the local citizens. Our process in the last few years has been that we will go out and talk to a municipality and get its concurrence on what we are proposing before it happens. In that case, that did not happen; it was made without consultation, I understand. I was not around at that time. As a result, there was a little bit of a problem that occurred.

In the future, my personal recommendation would be that with any new designations under the new Aggregate Resources Act, we have consultation and talk things over with the local municipalities before we designate an area, because I think that in doing that we can understand any of the ramifications in the local area and we can try and convince the local citizens that what we are proposing is good for them.

Mr. Fleet: Could you give us a year, approximately, when that designation happened, just for the record, please?



Mr. Scott: It was in 1981.

Mr. Fleet: Thank you.

Mr. Scott: Under this new legislation, in the designated areas on private land there would be two types of licences. There would be a class A licence, which is basically a commercial-type licence to excavate more than 20,000 tonnes per annum. It will require detailed site plans, at least in three parts. It will have to have a detailed operating and rehabilitation report. It will be prepared for that particular operation.

There would also be a class B licence, which is what I call a rural, one-man type of operation licence to excavate less than 20,000 tonnes per annum. It will have less detailed site plans, but the application package will be several pages in extent and many of the things that will be covered in the report or in the more detailed site plans will be answered in a question and answer format. It is for the small entrepreneur who is able then to go forward and make application and not have to have quite as many consultants and spend quite as much money. It is largely the type of operation where a man has one dumptruck, a front-end loader and does sewer work and other things around individual houses in rural Ontario.

We can only issue a licence if it complies with the zoning, so the municipality is in control when it comes to that aspect. The licence application may be appealed to the Ontario Municipal Board for a decision from the OMB.

Mr. Chairman: Could I ask some clarification questions about that. What do you mean by a detailed, three-part site plan?

Mr. Scott: That type of site plan is where it will show the existing features and will show the operating sequence, so there will be a sequence on the plan. I have a plan that I will show you later on and I can expand on it with that. It will show where they are going to start mining on the property, where they are going to rehabilitate first and then go on to the next phase for mining. The third part would be the final rehabilitation plan about how that property is to be rehabilitated in its entirety.

Mr. Chairman: The second question has to do with the class B designation, those under 20,000 tonnes per annum. Is there a situation involved there where the same owner could split up a property into two or three of the class B types as opposed to having to go with the class A type?

Mr. Scott: I suppose that is possible. We have never had that happen before. Anything is possible. We also have some other requirements in the legislation that allow our minister to up things to a higher level of detail if he so wishes. If we had someone come in and try that, we could use one of the other sections of the legislation to up it and make the person give us more detail than what is generically required.

Mr. Chairman: The third question has to do with the length of licensing. Is there a time limit on that or are they open-ended?

Mr. Scott: They would be open-ended until such time as they mined the property out based on the site plan, because they are only allowed to mine what the site plan shows they are going to mine.

Mr. Fleet: I wonder if I can ask some supplementary questions. How



many operators are you anticipating are going to fall under each of class A and class B?

Mr. Scott: That is a good question. We have 2,700 licensed properties under the Pits and Quarries Control Act at present, and I will use the same designated area for the numbers to make sense. I think probably 1,200 or so would be under the class A and maybe 1,500 under the class B. I am just guessing, but we could try and determine that more accurately for you later and give you an answer.

Mr. Fleet: Is it anticipated there are going to be more sites than the current number that would be affected as a result of this act? My impression was that more sites were going to be affected and you have given us an estimated breakdown that still totals roughly the same number of sites.

Mr. Scott: Yes. That is assuming we are staying with the same designated area, because in the other parts of Ontario—I will use some names—let's say in Muskoka, in the Pembroke area and in the area between Sault Ste. Marie and Sudbury, there would probably be another several hundred properties that would come under this act if we were to designate those areas.

I really cannot guess other than to say that probably there would be three quarters class B and one quarter class A in that area, because you are getting into a more rural part of Ontario and it is basically the smaller operator who exists in those areas. They would probably go for the class B licence in those rural areas, mainly because they do not sell that much material and it is a mom-and-pop type of operation, basically.

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Mr. Fleet: Would the class A sites be concentrated in certain parts of the province in particular?

Mr. Scott: The class A sites would be concentrated in what I would call the urbanized or highly developed parts of Ontario. However, there still would be some class A licences in other areas because we have them all over the place. It just means that in most cases, you are only going to have a smaller number of those larger operations in the rural areas.

Mr. Fleet: That would essentially be a ring around the Metropolitan Toronto region?

Mr. Scott: Yes, throughout southern Ontario. If you took a band from Goderich to Barrie, sort of dipping down through Peterborough and then over to Ottawa, anything south of that is going to have a higher percentage of class A licences because they are larger operations.

Mr. Fleet: You have talked in terms of sites with this class A and class B. How many actual operators are there? How many companies or individual operators are we talking about that would fall under class A and fall under class B?

Mr. Scott: In class A, the individual operators would be fewer in number. They are largely the large companies. You would have companies like Standard Industries Ltd., TCG Materials Ltd. and a few of those larger ones that would hold a fair number of licences. They may each have somewhere in the order of 10 to 20 licences.



Beyond that, you are going to get a few of what I call the local operators, ones like around Kitchener. You might have one that basically concentrates in that area but he has a good-sized operation. He would have class A licences; he may have three or four in that particular area.

In terms of the class B licences, you are going to have a very large number of operators in that category because in many cases they might have one or two, but it is very rare that any individual company or any individual person would have more than maybe two or three class B because they are usually small operators.

We would probably have 1,000 of these and maybe a couple of hundred of these companies. Those are rough numbers. We can try to get you more detailed numbers. I do not have those numbers at the top of my head right now.

Mr. Fleet: One of the things that I am just wondering about is the educational process of the operators with the new act. How many there are is going to affect how effectively we can communicate what the new requirements are. So if you have additional information at any point that relates to the number of operators and that process, I would be interested in hearing that. It is not essential I get it right now or even this morning.

Mr. Scott: We will get the best information we can for you. I am afraid my numbers could be off by a fair bit.

Mr. Fleet: Thank you very much.

Mr. Scott: This is a large operation and we have already covered this in fair detail already. I wanted to show that there are a fair number of large operations, and this is very large. This is along the Niagara Escarpment at Milton. This is Dufferin. There are also a very large number of small operations which are one-man or two-man type operations where they may have a dump truck, a front-end loader and maybe a bulldozer. You have a small pit face in many cases that is only 10 feet high that is being mined. This one is being rehabilitated at the present time.

This is the type of site plan that we presently have on the good operations. It has details on what area is going to be mined first and the direction of mining. It has cross-sections that are shown on the plan as to what type of sloping is going to be happening on the property. It shows where they are going to go after they are finished with area A. They go to area B and then C. It shows any roads that are going to be fairly permanent. There is a lot of detail like that on these new plans we are getting.

The new act is going to require even more detail than most of these older plans have on them. Some of the old plans, especially along the Niagara Escarpment, predate the Pits and Quarries Control Act even; they go back to the Niagara Escarpment Protection Act back in the late 1960s.

Many of those plans are so far out of date that they are virtually impossible to use as a mechanism for controlling what is going on today. This new act will require new site plans being prepared within the first four years for all the properties that are brought under the legislation. Those site plans will allow us to take the plan out on to the site, use it with the operator, work towards that plan and ensure that there is compliance with how that property is being operated.

Mr. Faubert: Just back to that one, a site plan under the Planning



Act has force in law. Do these really have force in law or are these simply for your own guidance?

Mr. Scott: These will have force in law as far as the new Aggregate Resources Act goes. They will not be part of the Planning Act per se, although to get a licence you have to have appropriate zoning and official plan status, which is under the Planning Act. So in a roundabout way they will have force in law through that process too, I would assume.

Mr. Chairman: I have another question with respect to the transition time. What status do the present permits have relative to the new act?

Mr. Scott: When the new act is proclaimed, there will be a period of three months during which any operator who wants to stay in business will have to make application for the same property he presently has. It will have to be the identical boundaries, and all the different concerns will have to be met. During that three months we will receive those, and then within the next three months we will issue a licence to them for the same property.

Over the next four years, we will have site plans brought up to date for each of those properties that are licensed. We cannot have the site plans done within a period of a couple of months like that, because there are only so many people who are qualified to draw site plans and there are also only so many staff members of the MNR who are able to work with the plans and get them all brought up to date in a reasonable manner. We figure that over a four-year period everything should be done quite appropriately, and that is really not that long a time period.

Mr. Fleet: The licence you talked about issuing after three months, that is a temporary licence. Is it anticipated that essentially it will go for just under four years and expire if you have not got appropriate site plans, or are you anticipating you might be issuing those, instead of for four years, temporarily for one, two or three years depending upon the priority you give to individual sites?

Mr. Scott: I understand what your question is. We would issue that licence with no cessation date on it. However, if they did not come forward and create the new site plans and did not meet all the requirements at any given time, we would then revoke the licence. That is how the legislation is set up, and from a legal standpoint, that is what our advice has been. We think it is quite workable. We have not had any concern voiced about that process.

I would like to go through some of the different considerations in licensing a property under this proposed new act. We will be looking very carefully at the effects on the environment and the community. We will be looking at the municipal comments as well. I think we have created a fairly good working relationship with many municipalities over the past few years. I think one municipality in particular, Uxbridge, has created a committee which has industry, the truckers, the municipal council and our ministry on that committee, and it seems that committee is working very well. We are hopeful that there are going to be more good types of committees like that established, so we can get good comments from the municipalities in licensing properties.

Rehabilitation of the site: Is it acceptable, how are they going to do it, what is going to be done and in what time frame? All those types of things are concerns that will have to be addressed in licensing properties. Effects on such things as the ground water and surface water are also of prime concern.

1100

Effects on agriculture: We have a very close working relationship with the Ministry of Agriculture and Food trying to encourage the rehabilitation of pits back to agriculture in rural Ontario. In most cases, that is probably a key component of what that landscape is going to be like for many years to come and we want to make sure that we do our part to rehabilitate it back to that type of use.

Mr. Pollock: Will the Pits and Quarries Control Act control the stripping of topsoil and that sort of thing?

Mr. Scott: It will on a licensed property but it is not intended to control it on nonlicensed properties. We do have some areas where a sod company, for example, might take sod off and it might also sell some of the topsoil for some purpose other than the sod, sell it as truckloads of topsoil. That will not be covered under this legislation as it is now written.

Planning and land use considerations are also paramount. We will be working closely with our other fellow ministries and with the municipalities to ensure that there is such compliance and acceptance.

I have already talked about trucking and the haulage routes. A few years back, rail haul was fairly prevalent from some of the large operations. It is basically dead today. There is such a small percentage hauled by rail that it is very difficult to even suggest that rail haul is acceptable today considering the fact that railroads are not interested in it.

The haulage route is something this particular legislation will look at when we are issuing a licence, and appropriate conditions or whatever will be put on that licence. We will be working closely with our fellow ministry, the Ministry of Transportation, to ensure there is an appropriate mechanism for addressing the haulage.

The quality and quantity of aggregate on the site is another concern we will be addressing in the licensing process. We will be ensuring that the areas that are proposed to be dug to a certain depth actually do have material there and so we will have a reasonable type of rehabilitation plan we can expect to be achieved.

I am stressing this again, because there has been a little confusion. I do know whether it is because some people have not read the act. I am not sure of the reason. Municipalities retain full control over the location of pits and quarries under the Planning Act. The licence cannot be issued if it complies with the zoning on that property. If it is extractive industrial, we can then issue a licence, but if it is rural or some other zoning that does not allow mining, we cannot issue a licence.

It is a two-pronged approach. There is the planning process and then there is the regulatory process under the new proposed Aggregate Resources Act.

Mr. Fleet: Can I ask another question? The discretion or judgement that a municipality makes with respect to location of a pit is overseen by the Ontario Municipal Board.

Mr. Scott: That is correct.

Mr. Fleet: Do you anticipate that the considerations the OMB will



bring to bear in any review will be the same after a new piece of legislation goes through as before?

Mr. Scott: The best I can say is that I think the OMB will look at it fairly carefully when it is doing the initial review for the zoning, and then when it is making its comments and review on the licence application, I would hope they would mesh quite accurately together and be synonymous. After they have done that, the OMB is basically out of the picture until such time as there is some proposed change that requires another hearing again.

Mr. Fleet: At a minimum, I take it, there is not going to be any change in the Planning Act considerations that OMB will go through; they are going to go through the same process.

Mr. Scott: The same thing as they do today.

Mr. Fleet: That is what I wanted.

Mr. Scott: Sorry; I guess I did not understand the question.

Mr. Fleet: I should have clarified. I was really just questioning in respect of the Planning Act.

Mr. Scott: We just left licences. Licences are on private land. They are for a permanent type of operation for the duration of the resource extraction as approved by the site plan.

We are still talking about private land. It is in designated areas and this is a method for getting gravel from wayside pits; it is called a wayside permit. We have various considerations that we have to go through before we issue one.

A wayside permit is for a municipality or the province to get gravel for highway construction projects: to supply material for that road job that they have the permit issued for. The duration of one of these permits is 18 months. We feel that 18 months is an acceptable time frame for most highway jobs today. Even considering the fact that they are building more bridges and high-grade structures now than they were a few years ago, we think that is a reasonable time frame.

Mr. Ballinger: Funny, I have lots of municipalities in my riding which say we are not building enough roads.

Mr. Scott: I am not going to comment on that.

In terms of wayside permits, there are various considerations we will have to be looking at: the effects on the environment and the community; municipal comments; effects on water, whether it is surface or ground water or whatever; cost savings to the province or to the municipality, and proper management of aggregate resources. By that we are talking about some of the wayside pit sites which are small properties. There is only a small amount of resource on them and you can actually use that resource up and then the land can be used for some other purpose and so we are not wasting that small deposit.

The other thing is that wayside sites in many cases are close to the road job, usually within a few miles. By keeping the truck haul distance to a minimum we are probably impacting fewer people than if you are hauling that

material, in many parts of the Ontario, from licensed properties that may be tens of miles away because there are not as many licensed properties when you get into certain parts of Ontario.

On the rehabilitation of the site or any previous permits on the site: We do not want to have more than one wayside permit on a site at one time. That is called multiple permits, like stacking, on the same little hunk of land. We want to have control on the longevity of how many permits we issue over a time period on the same site. It has to be necessary for the road project and it has to be a temporary inconvenience.

We feel there are quite a few safeguards and quite a few considerations we have addressed in the wayside permit process to allow for this to be a mechanism that is going to give benefits to the local municipalities, the Ministry of Transportation and the citizens of Ontario through this method that allows for a temporary pit permit to be issued.

I have covered some of these already, but some of the benefits of wayside permits are resource conservation, which we have talked about, and cost savings, both in transportation and providing competitive sources. I am not implying that the aggregate producers who have licences are out there to charge the highest price they can get, but if you do not have any competition you will probably have higher prices than if there is competition.

When we are talking about the taxpayer of Ontario—and generally speaking, about 60 per cent of the aggregate produced in Ontario goes to what you would call municipal or provincial structures, mainly roads—I think we want to be concerned about that particular aspect.

In terms of the environmental aspect, we consider that there are definite benefits to the rehabilitation of abandoned pits by using them for wayside permit purposes. Compared to alternative licences, there are environmental benefits as well because the licences, generally speaking, may be a fair piece away and the haul distance would be greater. There are other concerns of that nature that would come to bear where the truck traffic would impact more people.

#### 1110

This is a shot of a wayside property in operation. They had just finished mining this. They sloped it off. They are now mining that area back there, and this was all in a fairly short period of time. It just shows you that most of the wayside properties can be operated quite accurately and precisely with appropriate phasing and sequential mining to get material for road construction.

In terms of the crown land—we have left the private land now, we are going into the crown land of Ontario and we have a separate process, a separate type of permit for there—we, as the province, are both the regulatory agency as well as the disposer, I suppose, of a crown asset, so we have to have a different mechanism. We have to have a mechanism that allows us to sell the material and also to regulate it. This presently is under either the Beach Protection Act or the Mining Act, part VII, which deals with quarry permits.

About 80 per cent of Ontario is crown land. From this particular slide, you can see the green area, largely in northern Ontario, has over 81 per cent crown land, and then when you get further south, you get smaller numbers.



In terms of the crown land mechanism, we have what we are calling an aggregate permit. It will deal with the old quarry permits and the old Beach Protection Act licences. This will allow extraction on crown land either above water or below water, such as in the Great Lakes or in the beds of rivers, such as St. Marys River up at Sault Ste. Marie.

We have flexibility for different situations across the province and, believe me, the different situations we face on crown land, both above and below the water table, are quite great. That flexibility is required and is not meant to be flexibility to waive requirements. It is meant to be flexibility to create different types of site plans and whatever else is required to control the operation.

We will have better site plans for all these operations. There will be rehabilitation. Royalty will be paid by all users of crown land aggregates, except the crown. There will be better records on production. Improved management of crown resources in general will result, and we think that is going to be a considerable benefit to the province.

In terms of rehabilitation, under this new act, "rehabilitate" will mean either to restore it to its former type of use and character or to change it to some use in conformity with the approving agency, such as the municipality or whatever. If it happens to be close to Toronto, there is probably a high likelihood there will be other uses on that land than what was allowed 10 years prior when they originally licensed it, just because of the economic circumstances.

We have integrated the two different types of approaches. These approaches require that we have ongoing discussions and ongoing liaison with the municipality and the other groups that may have an interest in a given area.

This is a shot of a poor example of rehabilitation. I am proud to say we went back and made the operator fix up the mess. This is the type of thing that should not be happening. The new act is written in a way that controls how the rehabilitation is to be done and gives us more teeth to ensure that we are working with the industry to overcome this type of problem. There are very large erosion scars on this property; at least there were until it got fixed up.

In terms of this legislation, rehabilitation will include progressive and final rehabilitation of all the different sites, the regulations, the site plans, the conditions and so forth, all intermeshed to create a mechanism for proper control of these properties.

Rehab security will be required not just for licences but also for waysides. That is something that is completely new and we feel that it is probably long overdue.

We are very pleased with the type of involvement we have had with the Ministry of Transportation in the past, and it has a mechanism for controlling any problems on the site in terms of rehabilitation by holding back part of the money that would normally go to the operator who is doing the road job. But on other sites that is not the case and, in some cases, we have had to go to court over rehabilitation.

With this new legislation we will have that rehabilitation security up front, so if it is not done, we have a fair amount of money, eight cents per

tonne, which will allow us to go in and do the rehabilitation if we have to or will be an incentive for the operator to do the rehabilitation.

We are proposing the eight cents per tonne for rehabilitation security. It is quite adequate. We have looked at it. We feel that brings adequate money in to do rehabilitation today. However, that could be expanded to a higher number in the future through the regulations if we feel that is warranted.

We are still staying with the \$1,000 minimum and the \$6,000 maximum. We have found that has been quite acceptable over the last few years.

This is a wayside property that has been rehabilitated. That is Highway 403 in the left corner there. This is west of Brantford. They took aggregate out of this property. It just shows that if you do it right, you cannot even tell, based on the crop type, the height of the crop and the colour of the crop and everything else, that they have taken gravel out of that property. That is the type of rehabilitation we want to stress in the future.

I am sure everybody here can give me an example of a property that we do not think was done right, but there are a large number of properties like this, and in essence, part of the key is that if it is done right, no one ever knows it was a pit. That is what we want to see in the future.

We are also trying to encourage sequential mining of properties where, even though they are mining right here and trucks have to go up this road and up another road there, they have rehabilitated in close proximity to that site that is presently being operated. That is phased, sequential rehabilitation that we are encouraging. This act, if it goes through, will require that on all properties.

Similarly, this is the stockpile area and it has grass and tree cover right up to the stockpiles, so you have a minimum area disturbed at any given time. That is another feature that we are trying to promote through this legislation.

Where mining has occurred below the water table, ongoing monitoring and control of these types of operations does occur through our ministry and the Ministry of the Environment. In terms of the rehabilitation, we are promoting putting those properties back to an after-use that is in harmony with the local area and we try to promote as much fish and wildlife establishment on those properties as possible. We work with the operator to design the configuration of the bottom of the pond to ensure that there is going to be appropriate spawning and duck-nesting and whatever other types of areas around those properties.

Mr. Ballinger: Did you help them with the colour of the boats, too?

Mr. Scott: I did not have anything to do with that. That operator is up in the Ottawa area. They have received several awards over the years for their work.

This particular property is in Mr. Kerrio's riding. It is a former aggregate extraction operation down in here and there is presently extraction going on up in the back there, in the left-hand corner. A golf course has been established on this property and, basically, they are mining and golfing at the same time.

There are a couple of golf courses down in southwestern Ontario that I



am aware of that have been former pits and one in the London area is presently in operation as a golf course as well.

This is, similarly, in Mr. Kerrio's riding. I hope you can see it. In the foreground is grain on rehabilitated land; in the background is tender tree fruit on rehabilitated land. It just shows you that you can do these things if you work at it and if the industry, the government—our ministry, the Ministry of Agriculture and Food and other ministries—and the local citizens co-operate and come to grips with how we handle these types of properties and create an after-use that is acceptable to everybody.

1120

Part of this is proposed for the regulations. The enabling part is in the legislation. This is the tonnage licence and wayside permit fee that are proposed. It is completely new. Under the present legislation you pay your \$25— or \$100—a-year application fee and then that becomes an annual licence fee. Under this new act, what we are proposing is that for either wayside permits or for licences you would pay six cents a metric tonne; four cents would go to the local municipality, half a cent to the county or region, half a cent to a new abandoned pit rehabilitation fund—that is for properties that are not presently licensed or presently under wayside permits; these are your abandoned scars on the landscape, and I will show you a picture in a minute—and one cent would be retained by the province.

This is one of the scars on the landscape. You can see the banks are still there. There is grass growing on them. It has not been mined for years. It exists in certain parts of rural Ontario. On this particular beast, we would like to use this new-found money through the rehabilitation program that we are proposing with that half cent a year, which would work up to about \$750,000 a year, to be spent on rehabilitating these types of properties.

Here is one of these properties that the crown itself went in and rehabilitated. It was very similar to what you saw a few minutes ago. We basically sloped off the banks, put some topsoil down and spread some grass seed. That is the type of rehabilitation that would probably be occurring in most cases on these properties across rural Ontario. In certain cases there may be more detailed work required, but in all cases the key component is that we are going to be working with the local municipalities to come to grips with what priority they place on each of these different pits that may be in their municipality, so we can create a ranking and a system for determining which properties would be done first and how they would be done. It is another mechanism for getting the municipality thoroughly involved in the program.

We see a lot of benefits to the municipalities, the citizens and the industry: greater environmental protection—I think that is a benefit to everybody—more and better rehabilitation, financial remuneration to municipalities and more municipal involvement in licensing and in the review, especially the four-year review where we go over the site plans to determine if they need modifications. We look at the legislation, the site plan and any conditions on the licence of that property and we consult with the municipality as to whether it thinks the property has been operated appropriately. We also look at the various agencies that we are also involved with, like conservation authorities, the Ministry of Energy, whoever.

We can require changes to an operation at any time with this new legislation. If there is something that is going wrong on a property, we can correct it.

With regard to the abandoned pit part, I am not going to talk further on that. I have already said a fair bit. I guess, in essence, there is overall control and overall trust that we believe we have put into this legislation the way it is written, and that will overcome the problems we have with the Pits and Quarries Control Act, where we probably got off to a bad start with inadequate staffing and have not been able to regain that trust in many respects with the old legislation. Also, it lacks a lot of teeth.

We are proposing to create an applicant's guide, similar to the one we handed out for the Pits and Quarries Control Act, for the new Aggregate Resources Act to show the industry or anyone else how the system works. We also are proposing to create a new guide, which is called a citizen's guide, to tell the citizens how they can go about learning more about the operations in their area, how they can get more information and how the system works in terms of licensing new property.

In recapping, I would like to go over a few of the highlights: financial remuneration to municipalities based on the production in a given area; greater consideration of the environment; increased progressive and final rehabilitation; improved site plans; more municipal involvement in licensing and review and ongoing management of aggregate resources in Ontario; there will be a rehabilitation fund for abandoned pits and quarries, which we have talked about; we will also have the powers of immediate suspension if there is a major problem on a property, and we also have the mechanism for revoking licences in the new legislation.

There is considerable flexibility in some of the controls and rehabilitation requirements on crown land, because we feel it is necessary, based on mining below water, mining above water, mining in an extremely remote area and mining within one mile of Sudbury. All those different types of requirements have to be addressed in this legislation. We have flexibility to require virtually the same requirements on crown land in terms of site plans and control in close proximity to, for example, Sudbury, as would exist on private land in that same area. That is some of the flexibility and the manoeuvring that is required because of the complexity of this very large province.

The wording provides better overall management and enforcement. In a nutshell, that is one of the keys. We are looking forward to this legislation allowing us to do what I think what the citizens want in Ontario. Thank you.

Mr. Chairman: Thank you very much, Mr. Scott. Are there are further questions of Mr. Scott by members of the committee?

Ms. Bryden: I do appreciate Mr. Scott and the ministry giving us the rundown of what was on the slides; that was very helpful. But there are one or two pieces of information you mentioned that I think maybe we should have, Mr. Chairman. One is the question of the policy statement, which Mr. Scott mentioned is not before us, but I think it should be in our kit so we know what the policy statement does say. I do not believe it is there.

Perhaps members should also be alerted as to which Hansard the debate on second reading covered so we can all have an opportunity to read that over. It may be more than one Hansard. I know it was within the last month or two that the bill passed second reading.

The other thing that bothers me is these 45 amendments that have been tabled by the government. It really gives us a whole new bill. We should maybe



have them worked into the first-reading bill we have so we know where they do fit and what they do. I do not think the research department has done that yet.

Those are requests for additional information.

I might say that Bud Wildman, our other representative on this committee and who is responsible also for the Aggregate Resources Act, was socked in up at Sault Ste. Marie this morning. He would have liked to have been here and he will possibly arrive some time in the afternoon.

Mr. Chairman: I think this would be a good time to indicate that we began the meeting after contacting the New Democratic Party caucus office. They indicated that to us at that time and suggested that it would be all right if we got going, because we knew the presentation would take up most of the morning and we were not sure—

Ms. Bryden: I only got the word at 9:30 a.m. that nobody else was available.

Mr. Chairman: I appreciate your getting here as quickly as you did because of the inconvenience of the other two people.

Mr. Ballinger: Can I just ask a question? For my own information, are you going to be sitting on the committee with us, Ms. Bryden, for the duration?

Ms. Bryden: I am a regular member of the committee and Bud Wildman is substituting for Brian Charlton, the other regular member who is not available. I will be here as much as I can.

Mr. Ballinger: That is fine. The point I was going to make, Mr. Chairman, was that if Ms. Bryden was only going to be here for the day, her request is for an awful lot of work by the staff of the committee, but if she is going to sit as a regular, that is a different story altogether.

1130

Ms. Bryden: With respect, is it not a question of whether the committee thinks this information is valuable? We can vote for or against it, but I am not sure which days are available.

Perhaps I should notify the chairman that neither Mr. Wildman nor myself can be here Thursday morning. We both have absolutely unbreakable commitments. I was going to suggest that we should consider pushing the Thursday morning down to Thursday afternoon to accommodate.

My unbreakable engagement is with the Minister of Housing (Ms. Hosek) to deal with a very serious housing problem in my area, and half a dozen people are coming. Mr. Wildman has a conflict with another committee that is meeting up in Sault Ste. Marie.

Mr. Ballinger: Excuse me. Is Bud going to be here this afternoon?

Ms. Bryden: I have no idea.

Mr. Ballinger: Is there any indication?

Mr. Chairman: He is fogged in. That was all we learned.

Mr. Ballinger: Can we wait until this afternoon to see if he arrives? Maybe we can discuss that later this afternoon when he is here.

Mr. Chairman: I would like to react to this last request. I was going to suggest by the end of this meeting that there will be an updated agenda for the rest of the week. At the present time, with the agenda you have, it looks like we are free on Thursday afternoon. But this is a tentative agenda. What we did, because of the shortness of time, was to sock in the first day. There were requests that came in as recently as last Thursday, and we tried to accommodate all requests by members of the public that we could up until last Thursday.

I think we have a full schedule for every segment of the remainder of the week, with people with specific times coming in to address the committee. As chairman, I think we really should accommodate those people. I am not very receptive to changing it at the last minute like that, as the chairman of the committee anyway.

Mr. McLean: I am just wondering, Mr. Chairman, if you are going to keep us in the dark for the rest of the morning.

Mr. Ballinger: You have been in the dark for 20 years.

Mr. Chairman: The power is back on.

To summarize the three requests made by Ms. Bryden, with respect to the policy planning document, I do not think that is going to be too much of a problem. This is the document here. I think that is quite a reasonable request. I believe that getting the specific Hansard when this was talked about on second reading would not be that big a problem either. Logically, the critics—I believe, Mr. Pollock, for example, you have all the amendments and have had them for a period of time.

Mr. Pollock: Yes.

Mr. Chairman: My understanding was that the amendments were made known to the critics and everybody who would be actually discussing the bill, and there are additional copies of those available, so that really is not a problem either. I cannot see why all three of your requests could not be made available. In fact, I had listed on my statement wish list that I wanted a copy of this too, so we will look after getting those into your hands.

Ms. Bryden: Regarding the amendments, I was just thinking it would be useful if our staff could do a similar job to what has been done in the book here of the concerns of different groups, putting it opposite each section so that we know exactly what is amending what as we go through the list.

Mr. Chairman: My understanding is that in this black booklet, most of that reconciliation has already been done. I spent a fair bit of time looking at it and it seemed to clarify it for me. You seem to have the first reading of the bill in one column and what the proposed amendment is in the second column. While the number of amendments proposed is significant, I believe it is a serious attempt to modify the bill based on input by members of the community.

I want to expand a little bit on who is coming before us, before we conclude this morning's session. There were nine umbrella groups for the



province, like the Association of Municipalities of Ontario, which submitted written briefs over a period of time before second reading. We took it upon ourselves to ask those nine groups to come before the committee if they so desired.

In addition to that, there were a number of townships and others who had indicated that they would like to make a few comments, and we contacted the people who had contacted a member, if that was brought to my attention or the clerk's attention. Since second reading, there have been a number of other people communicate with the clerk's office and with me. As far as I know, as of last Thursday, everybody who has requested to come before the committee has been accommodated this week.

That is the background for the hearings for this afternoon, Wednesday and Thursday. It was the wish of Bud, Jim and myself, who carried on the discussions here in conjunction with our whip, Mr. Fleet, that if we can get the public part of the hearings out of the way as background information, it would be advantageous prior to the clause-by-clause, which we would like to begin on April 17, the second week that has been set aside for this committee to meet. That is the basic format that we are hoping to follow.

I am not sure how we can accommodate Thursday morning at this stage because, without any warning, I think we have four people slated to come in at half-hour intervals on Thursday morning. Rescheduling those four groups might be quite difficult.

Ms. Bryden: I would just like to say that we became aware of this situation around the middle of last week and we spent a couple of days canvassing every one of our members. Not one is free on that morning. Most of them are on other committees, so that it is a question of which comes first, the democratic process or accommodating groups. I agree that they are both very important, but at the moment, I cannot see that any New Democratic member will be available in the morning.

My appointment with the minister is at 9:30 a.m. and it could take two hours. I will be here in the afternoon, but you may want to work over the lunch hour or run a little late or something like that. When you only have 19 members against 94, it is rather difficult to staff all these committees.

Mr. Ballinger: I just want to comment. Can we wait until this afternoon and see whether Mr. Wildman, as the critic for the ministry, is available for this discussion? I think at this stage at least we should extend that courtesy, if Mr. Wildman can be here to have that discussion. I do not want to be difficult with discussion. I agree with you that it might be difficult to accommodate, but I think, generally, on behalf of the minister, we would hope that Mr. Wildman could be available.

Mr. Chairman: Could we get in touch with Mr. Wildman's office and find out what is going on by two o'clock this afternoon? We will have to rediscuss this, maybe at the end of this afternoon's session.

Is there any further discussion with respect to the presentation this morning? There is one other item I would like to indicate to the committee, just from a housekeeping point of view. I erred in not introducing Jerry Richmond to the committee this morning. I think most of you already know him. He has been assigned as a researcher to the committee for the hearing portion of the committee deliberations, namely, this week, if the hearings go this week. At the end of that time, he will be writing up a summary of the intent

of each of the presentations, as he perceives them, of the people who come before the committee.

In addition to that, I expect that some of the people coming before us will be submitting written submissions to the committee. As part of that summary, I have asked Jerry to give an itemized list of who did give written submissions which will be in the hands of the clerk, so that any of us who want to get copies of those can do so if the people do not bring enough copies with them or we do not make those available to you during the committee hearing when they are presenting.

This was really the only thing we had scheduled for this morning, so unless there is further comment by the committee, I will--Mr. McLean.

Mr. McLean: Mr. Scott will be here during the whole process, I presume?

Mr. Chairman: I understand that Jerry, as a researcher, could get information for you. But as I indicated earlier this morning, Mr. Scott really is the aggregates expert in the ministry and he is also available for information to the committee.

1140

Mr. McLean: I just have one question from this morning's presentation: If there was input from AMO and all the different organizations, why was it necessary to have 45 amendments?

Mr. Ballinger: I think the amendments should be clarified.

Mr. McLean: I asked Mr. Scott the question.

Mr. Ballinger: You were talking about core amendments. Some of them are cross-referencing amendments which are no more than housekeeping. We are not talking about 45 high-impact amendments. I think there are only 42.

Mr. Chairman: You understand, Mr. Scott, that you are not required as a government official to comment on policy. It is just a clarification process.

Mr. Scott: No, it is just a clarification, really. When we wrote the act, we wrote it based on the best input we had at the time. At that point in time, we felt that we were integrating appropriate things in it. Since then, we have had consultation with the Association of Municipalities of Ontario, the Conservation Council of Ontario, the Aggregate Producers' Association of Ontario, the Ontario Good Roads Association, the Ontario Road Builders' Association, the Canadian Land Reclamation Association, the Foundation for Aggregate Studies and a few others.

As a result of their written submissions to us, as well as verbal meetings and discussions with them, we felt that it was warranted to make some legal amendments because of some legal problem that we found we did not see before or because of some technical or other reason.

There are about 17 of what we would call major or full-fledged initial amendments and then there are a whole bunch of ripple-effect ones that go through the act. I do not think, at least I hope I am not getting into policy there. So 42 sounds like a lot, but really there are only about 17 that have



any substance. The others are a ripple effect to make sure that section 23 is referred to in section 60 in an appropriate manner. That is basically why you get 42.

Mr. McLean: I am just curious. In section 58, the minimum fine is \$500 and the maximum is \$5,000 for each day. In your amendment, it is minimum \$500 and maximum \$30,000. What would cause you to change that number drastically?

Mr. Chairman: Perhaps Mr. Ballinger should answer this question.

Mr. Ballinger: With respect to amendments similar to that one, quite frankly, the politics of this is that this has been around for about 15 years. After first reading, everyone—I should not say everyone, but a good number of people—thought that this would be like similar examples that have happened in past history, that it would never go any further than first reading.

But when in fact the government began to bring it forth for second reading, many of the organizations started to realize that this government was intent on bringing forth a new Aggregate Resources Act. So consequently, in responding to what Mr. Scott said, there has been a renewed interest by a lot of the organizations that believe that our government really is intent on bringing forth a progressive, new piece of aggregates legislation for Ontario.

Mr. McLean: I did not ask you for a political answer. I asked you for the reasons.

Mr. Ballinger: With the greatest of respect, that is the basis for why we are here, that in actual fact, there were a lot of organizations which did not believe that there would be a new Aggregate Resources Act. In response to that, there have been a number of organizations that have said that the fines that were proposed on first reading were too low.

As a government, we had an option—two options, I guess. One was to do nothing until we brought it to committee; the other that the ministry could take a serious look at some of the submissions and propose amendments in accordance with some of those suggestions. Quite frankly, that is what the minister has done. He has addressed some of the issues of some of the organizations prior to the bill even getting to committee. The \$30,000 maximum fine is a result of that.

Mr. Chairman: I would hope that the committee members take this philosophy with a serious intent too. If the proposed amendments can make the thing better by subtle modification, I think that the way I read it, from lengthy discussions over the last two or three weeks, Mr. McLean, the ministry would be very receptive to that, because there is a serious attempt here to make this act workable and what the people who are in the industry really want, as much as is possible.

Mr. Ballinger: I did not even get partisan.

Mr. Chairman: I feel quite comfortable with the fact that 17 possible proposals like this have been listened to.

Any other comments? With a reminder that I would really like to begin at two o'clock because we have some guests coming in at that point in time, we will adjourn the meeting for this morning.

Mr. Ballinger: Can we leave our material here or should we take it with us?

Mr. Chairman: I think you can rest assured that the room will be secure.

The committee recessed at 11:46 a.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

TUESDAY, MARCH 28, 1989

Afternoon Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

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Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Collins, Shirley (Wentworth East L) for Mr. Ruprecht

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Foundation for Aggregate Studies:

Green, Tom, Director of Policy

From the Ontario Road Builders' Association:

Ryan, Arthur, Executive Director

Lawrence, Charles, President, Huron Construction

West, Colin, Vice-President, Ambro Inc.

From the Conservation Council of Ontario:

Hanna, Edward, Chairman, Aggregate Resources Act Review Committee

Harrington, Glenn, Immediate Past President

From the Association of Municipalities of Ontario:

Wales, Jim, Reeve, Township of Tosorontio

Clements, Brad, Councillor, Regional Municipality of Halton

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, March 28, 1989

The committee resumed at 2:07 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: Seeing that there is a quorum, I would like to begin the afternoon proceedings. I believe we have a few copies of this document which Tom Green, the director of policy for the Foundation for Aggregate Studies, is going to be talking to and I assume we will be getting more copies for the other committee members at a later time.

Mr. Green: In a few minutes.

Mr. Chairman: Okay, good. The other thing that I would like to point out is that each of you should have a written submission from the South Peel Naturalists Club and a second one, from the Sierra Club of Ontario, which the clerk distributed to each of you.

Our research person, Jerry Richmond, obtained copies of what we think are the pertinent Hansard pages for the debate, which were requested this morning. That is in hand. I believe the ministry people have brought us sufficient copies of the policy document for distribution as well. I think all but one of the things that were requested this morning are now in hand.

As I indicated this morning, I would like to get going as near to the time schedule as we can. I apologize, Mr. Green, for our being a few minutes late in getting started, but we will start from now and give you 30 minutes. If we get into a dialogue at the end on questions and answers, that kind of thing, I will give you notice about five minutes towards the end of the half-hour interval, so that we do not keep the other presenters waiting. If you would like to begin, feel free.

FOUNDATION FOR AGGREGATE STUDIES

Mr. Green: Okay. Thank you very much. I am the director of policy for the Foundation for Aggregate Studies. The foundation has been around since 1976. It is a nonprofit organization. Basically, it represents public, municipal and environmental interests in the field of aggregate extraction. The foundation does recognize the need for aggregates in Ontario for our province and for the economy of Ontario, but the foundation believes that extraction should be carried out in an environmentally and socially responsible way.

The foundation responds to inquiries across the province concerning aggregate extraction and related legislation. We carry out research in this area. We intervene in hearings when we think they are of significant importance that our attendance is necessary. We monitor the industry, the Ministry of Natural Resources and other ministries as they relate to aggregate resources. We also provide recommendations on policy and legislation. We did



this in the past on Bill 127 and this is my area of responsibility.

I know Mr. Ballinger, having been a member of the original working group that looked at aggregates, is slightly frustrated with this process. I can share that with him a bit. I was hired two years ago to deal with the "imminent" introduction of the Aggregates Act and I am still with you here two years later. Hopefully, you will finish my position in the very near future.

I am very pleased to appear to talk about this legislation. Having listened to Dale Scott earlier in the day, I just had to check over lunchtime to make sure we were looking at the same piece of legislation, because at times I think we had very different interpretations of what that legislation would mean for this province.

The brief that you have there in front of you is the result of much research by the foundation, and we had a number of people who also reviewed this brief. They included a mayor, a councillor, various citizens, some lawyers and so on. The brief you have there is divided into two sections. One deals with the act as it stands now and the appendix deals with the amendments. We kept them separate, because we understood the government could change the amendments if it so desired later.

We have heard this morning about the consultation process that this act went through, and I, being a member of an organization on the receiving side of the consultation, can tell you that this was not a very satisfactory consultation. For instance, we received the amendments on March 22 and were to make comments and include them in our brief, and that has been a very difficult thing to do.

We are also disappointed to see that the amendments did not show more signs of having accepted the recommendations that we made in our first brief to the government.

We are also surprised to be before the standing committee on general government as opposed to the standing committee on resources development, which I understand would normally deal with these types of matters.

We are also concerned that in the background paper that came with the amendments the foundation's position was misrepresented as supporting this legislation as the government presented it in Bill 170. Unfortunately, the foundation could not support it as it was then.

That being said, though, I would like to now get into the legislation and what we think the context for the legislation is. As I stated, at the foundation we were consulted about the Pits and Quarries Control Act, the mineral aggregate resources policy statement and related matters. We deal with about 200 cases a year where citizens or lawyers or municipalities are inquiring about the legislation. They are trying to get a different viewpoint than that presented by the ministry or they are trying to find out what other citizens have done in similar cases. The people on the other end of the phone are often shocked at how little protection the legislation currently provides them with and they feel that it is very much stacked against them.

I think the present legislation has been acknowledged as being ineffective by all parties involved in this, and the first was of course the Ontario Mineral Aggregate Working Party report. I guess there is no need for me to repeat this, since the parliamentary assistant was a member of that working party. It documented the problems as they were in Ontario in 1976. But

I would suggest that it is not a good basis for legislation in 1989. I think it is a dated document.

There was no concept of sustainable development at that time, and as this province has now committed itself to using a sustainable development approach, I think we have to be wary of using such a document. It could not obviously incorporate something that was then unknown. Another matter is that public appreciation and concern for environmental problems are very different now in 1989 than in 1976, and I am sure that you probably noticed that with your constituents.

The next thing in the history of aggregate legislation is of course Bill 127, which was introduced in 1979. It had major flaws in it. There were many submissions on it, and the Liberal Party at that time presented some excellent amendments in order to improve that legislation. However, the Conservative government left the bill to die on the order paper and the province was then left again without aggregate legislation, or new aggregate legislation, I should say.

With the new government, we had the mineral aggregate resource policy statement in May 1986, and I believe you have all received a copy of this document now. It was disturbing to see, when you looked at what the government had come up with, it went against what was then the Liberal Party's policy.

Because this was released without other policy statements in the other areas and because it still stands alone as a policy statement, it has led to a skewedness in the planning, because there is only one policy statement and it is talking about aggregates and there is not something to balance it off in wetlands or in food lands. Although we have the Food Land Guidelines, we do not have the policy statement.

That has left us with aggregate as the number one planning priority in Ontario and I think that is probably not where our greatest concern is, even though it is a very important aspect of the resources in this province.

It has left us in a situation where almost any pit will be approved, regardless of whether it makes sense. For example, I think you will have some people coming to you from Mulmur township talking about a school which has pits on three sides of it, which was approved. You will hear some similar stories and I will not go over them now.

Then we had Bill 170, which we have before us now. We were very disappointed to see it at first. We were surprised to see how similar it was to Bill 127 and how little change there was, given that it was 10 years later than the first act.

We made our submissions and a number of other groups made their submissions, including the Conservation Council of Ontario, the Niagara Escarpment Commission even made submissions, a number of smaller groups and the Canadian Environmental Law Association, but what resulted from this process is that it would seem the amendments have not addressed the concerns that were identified by these groups, and I think these groups did take a fair amount of time to look through this legislation carefully, because it affects a tremendous area in this province and a lot of citizens.

Of course, we are very pleased to be before the committee and we suggest that the committee look at this act very seriously and make the many amendments that are going to be required if this legislation is to be brought



into the 1990s.

From the foundation's viewpoint, there are several reasons to require new legislation. The first is that the Pits and Quarries Control Act is weak. It is basically an application form for a licence, as we see it. There is a legal reference in Ontario environmental law. It refers to this act as stopping only "the most blatantly obnoxious operations." You can see that it really is not the kind of environmental legislation we want to have in Ontario.

Mr. Chairman: Do you want to take questions now, Tom, or would you rather finish your presentation first?

Mr. Green: As would suit the members.

Ms. Bryden: After he finishes; I want to get on the list.

Mr. Green: Because the act does not cover all of Ontario, we feel there are areas which will be pollution havens where it will be possible for someone to compete better than someone in a designated area because he will not have the stringent environmental requirements that the neighbour does.

There is a serious problem with rehabilitation in this province and we do not believe this act will achieve the necessary rehabilitation. We do not believe surrounding communities are properly protected. We do not believe there is proper consideration of the need for a new pit or the impacts the new pit will have on the community and the local environment, and these are both basic elements of good resource planning.

There is too much ministerial discretion. It is an uneven playing field for the citizens.

However, I would like to stress that I do not think that the weaknesses of the Pits and Quarries Control Act are the only problem today. I think if the ministry wished, it could be more vigorous in enforcing this legislation and we would not have the problem quite as badly as we do have it today.

I would now like to go through the legislation with you, and if you would like, I can refer you to the relevant points in my brief.

1420

First of all, on page 2, we talk about the restrictive definition of the environment. That is at the bottom. We suggested that the government use the Environmental Assessment Act for the new definition. Instead, the government came up with the amendments which are a combination of the Environmental Protection Act and a previous version of Bill 170.

Because it refers to the use and conditions in surrounding land, we feel this is very restrictive, and since the term "environment" is used throughout the act, this affects the act throughout. A good strong definition of the environment is definitely necessary.

The purpose statement, which is also on page 2, is, in the foundation's view, not strong enough.

On page 3, we have some serious concerns with rehabilitation. Part of the definition of rehabilitation is "(b) is changed to another use or condition that is or will be compatible with the use of adjacent land." The

problem with this definition is that it is very open-ended. We believe that almost anything could be compatible with the use of adjacent land, especially if the adjacent land is going to be a parking lot.

With respect to qualifications of inspectors, the foundation and other groups felt very strongly that these inspectors are required to look at what is going to be a more complicated act and they should have some training. Right now, the act does not require any qualifications on behalf of the inspectors.

With respect to classes of licences, this is covered throughout the act. As Dale Scott mentioned, there are classes A and B, wayside permits, aggregate permits. The foundation believes that class A and B licences should be made into one class. We do not think there is a good argument for having the two distinctions. We think by having the two classes it will be easy for an applicant to get a class B licence and a couple of years later decide to go to a class A licence. His neighbours may not have been concerned at first, but when it suddenly becomes a very big operation, the operator will be able to say: "I have already been operating here for a while. There has been no problem, so I should be able to have a larger licence." We think they can be combined and we urge the committee to look at that.

With wayside permits, the use in Ontario of wayside permits is unsatisfactory right now because they allow for weaker standards and there is no public right to hearing to make sure they are properly controlled or whether it is even proper to be there in the first place. They are also used as, again, another method to get a permanently licensed area once you have disturbed the land in the first place, and they are used to avoid licensing.

I think some of you are familiar with the case of the construction company in Erin township where 22 wayside permits were issued for the same property. In a case like that, they should definitely be required to apply for a permanent licence.

On page 4, we talk about the qualifications to prepare a site plan. The site plans, as Dale Scott said, are critical in terms of ensuring the protection of the environment, ensuring the resource is properly extracted and the area rehabilitated. As the act now reads, a surveyor or even an electrical engineer could prepare the plan, because the requirement is that there be an engineer or a surveyor—there is a list of other people.

We believe there should be a test of some sort or a certain mechanism to make sure that those who prepare these site plans or supervise the preparation of site plans are capable of doing so, so that we end up with good quality site plans, because frankly, some of the site plans that are out there now are quite unsatisfactory.

In section 9, which is on page 5 of our report, we deal with the report to accompany a licence. This report is intended, I believe, to identify environmental and social concerns and look at a number of other things before a licence is issued for a class A licensed pit. As stated earlier, we believe this should apply to both of them. However, as the report is now, I think it is unsatisfactory in that it makes operators go through a lot more work with not much more reward and very little effect on the final decision with regard to issuing a licence.

We have detailed here for you some of the things we think are requirements or should be requirements for that section 9.



On section 12, I believe it is, which is the criteria for issuing a licence, we had some concerns because some of the good things of the Pits and Quarries Control Act were dropped, and that is very unfortunate. The old act referred to the preservation of the character of the environment and surely this is an important consideration in 1989. It also looks at the need for aggregate resources and the availability of the natural environment for the enjoyment of the public. Again, we would like to see those put back in.

On page 5, we also discuss the minister's discretionary powers. This act makes much use of discretionary powers and allows the minister to waive requirements. He is not bound by the recommendations of the Ontario Municipal Board. He can issue such conditions as are considered appropriate. The problem with all this is that it does not ensure the protection of the environment for the local community. It depends on the minister. It depends on the staff who are working for him.

YOU have to wonder why a township such as Puslinch is going through a very expensive hearing on licence applications, only to arrive at the end of this process and find out that the minister has decided not to listen to the recommendations of the Ontario Municipal Board. You have to wonder, as a citizen organization participating in this process, whether you should in fact be putting all this energy into the process.

On page 6, we look at the municipalities' role in the new bill. We are concerned that this act further erodes municipal control, and in this field it also goes against previous Liberal government policy, which is distressing. Wayside permits will now be allowed in areas of existing development or particular environmental sensitivity. That is directly against what the mineral aggregate resource planning policy statement says, so the government is contradicting itself in the act and in the policy statement.

There is also section 66, which is a bit of complicated legal argument. I do not know if the municipalities realize what effect this may have, depending on the courts' interpretation of this section. It will in our view remove all ability of municipal control, aside from zoning bylaws, with respect to aggregate extraction.

On page 7, we go over the licence fees and the rehabilitation deposit. A rehabilitation security deposit of eight cents per tonne was recommended by the working group back in 1976 and we found mention of six cents per tonne in Bill 127, so both of these are at least 10 years old and they have not changed. We think the ministry should come up with its rationale for not changing this, given that there has been inflation and that costs have increased in these areas.

With respect to the penalties under the act, the increases to \$30,000 a day are welcome, but the foundation is not really sure that this is the way to improve the situation with respect to aggregates in Ontario, although the penalties should be there for the most blatant violations.

In the appendix to our report, on page 7 we have enumerated the cases the ministry prosecuted in the past. We referred to the years 1985 and 1986. That is under "Section 58, Increase in Penalties" on page 7 of the appendix. You will see there that 24 of 27 prosecutions were for the most blatant infractions of the act. In other words, the government has only been going after the most blatant infringements, and this is part of the problem.

There has been much talk of the abandoned pit and quarry fund and how

this will help solve the problem with all the abandoned pits and quarries in Ontario. Using standard figures for rehabilitation, the foundation estimates that about 111 hectares per year can be rehabilitated. We suggest it will take a lot longer than the 10 years suggested by the ministry to rehabilitate the abandoned pits. Perhaps the ministry should come up with some backup to that figure of 10 years.

1430

Section 68 of the act allows the minister to get relief from regulations. We think that section is too broad. It is not open to being checked by those involved.

I have talked about the problems with the act as we read them. However, there are some things that are missing in the act and I would like to talk to those as well.

We believe environmental assessment is a key to good resource planning and to a sustainable development approach. It was a recommendation of the working group, which Mr. Ballinger may remember, when it recommended the act contain "equal environmental requirements to be applied to pits and quarries." That is as referred to in the Environmental Assessment Act.

The Liberal opposition at the time went even further. They stated they would "require that all pits and quarries be subject to an environmental impact assessment and apply to the provisions of the Environmental Assessment Act," so it is surprising not to see this in the act.

With respect to rehabilitation, we would like to suggest that you obtain a copy of the confidential report called An Evaluation of the Rehabilitation Incentive System of the Pits and Quarries Control Act. If the ministry will not give you a copy, perhaps we can give you some. Basically, that details the severe rehabilitation shortfall there is in Ontario and shows that the rehabilitation deposit is not working as it was supposed to. One conclusion of that report was that, "In any year most operators do no rehabilitation." I suggest that would be a good report for the committee to look at.

With respect to public access to information and the ability of the public to participate in the decisions that are involved here, there are some improvements. We are very happy to see the government has included the posting of applications with signs around the property boundaries. We think that is very good. We are also glad to see that private prosecutions are now allowed. That is also very welcome.

Mr. Ballinger: You mean we have done something right.

Mr. Green: That is right.

Mr. Ballinger: I am glad to hear it.

Mr. McLean: It took a long time to get there.

Mr. Ballinger: Don't you talk over there, my friend.

Mr. Green: Perhaps I should just add that the foundation also commented on the Intervenor Funding Project Act at the request of the Attorney General (Mr. Scott). We came up with some recommendations, he implemented them and we enjoyed the process very much, so we are not always negative.



With waysides, we do not believe the process allows public scrutiny, as should be required. It is an issue of natural justice here whether they can participate in the decisions that affect them.

With respect to hearings under the Aggregate Resources Act, they are all held under the Ontario Municipal Board. Having participated in a number of hearings and read the decisions of a lot of them, the foundation believes that the OMB is inappropriate, because what we are looking at here in effect are environmental matters. We believe it would be most appropriate if the Environmental Assessment Board and the OMB were to hear these applications through the joint board. We already have a process for that in Ontario and it would be very easy to extend it to the new Aggregate Resources Act.

On page 13 of our brief at the very bottom, we talk about how in the old act the minister was to refuse to issue a licence where the operation would be against the public interest. We think that wording should be retained in the present act and we are disappointed to see it gone.

The hearings under this process are very complex and very costly for a citizens' group to intervene. Because the Intervenor Funding Project Act does not apply to the Pits and Quarries Control Act or to the Ontario Municipal Board Act, there is a need to spell out in this act how interveners will be helped either through cost awards or through some other provisions, so that they can participate in these decisions and so that it is not a one-sided affair.

With respect to the Niagara Escarpment plan, we have serious concerns that the Niagara Escarpment, which I understand, Mr. Chairman, you have been very personally interested in lately, is not properly protected by this act. If you remember when Dale Scott showed the slide of where the bedrock resources were, there was one right under the Niagara Escarpment. It is very important to make sure this act protects the Niagara Escarpment properly. I urge you to look very carefully at the submission made by the Niagara Escarpment Commission. I think they had 37 recommendations for the government.

Although the new act requires development permits for wayside pits, which again is very welcome, most of the 37 recommendations are not addressed in the amendments, so I urge you to look at them.

Mr. Chairman: Could I interject to indicate that there are just a few minutes left in your half hour.

Mr. Green: Okay; thank you. Just briefly then, the act also does not in our view safeguard prime food land, sensitive environmental areas or heritage resources. With respect to transportation, conservation and recycling, we think the government could be doing much more. The brief gives, for your benefit, a comparison between Liberal Party policy in the past and this act. That is on page 17 and may be of interest to you.

Perhaps what is required here is some process, perhaps an inquiry or something, to get the information out of the ministry to find out where the problems are, to see whether this act is really going to address them. We only get to deal with aggregate resources legislation every 10 or 15 years, it seems, so we may as well do a good job of it.

In conclusion, the foundation is disappointed with the act and the amendments. We believe the government could have gone much further and should have if it is interested in a sustainable development approach. This

legislation will have a profound effect across the Ontario landscape, so we think it should be looked at very seriously. Otherwise, I would be pleased to answer any questions.

Mr. Chairman: I have three questioners on the list, but in the time allocation we are not going to have time for all of them. I think we have time for yours, Ms. Bryden.

Ms. Bryden: Certainly, Mr. Green has produced a very thorough review of the new act and its shortcomings regarding picking up some of the good parts of the old act, but I am particularly concerned about the fact that the definition of "environment" in the new act seems to be quite different from the definition of "environment" in either the Environmental Assessment Act or the Environmental Protection Act.

What is your view as to which of the three acts should be used for a definition of "environment" and what is the shortcoming or the advantage of the one that is in the present bill which says "'environment' means the use, condition and natural features of the site and adjacent lands"?

Mr. Green: To answer your question, I guess we have to look at the proposed amendment to that section which says "'environment' means land, air and water and includes the use, condition and natural features of the site and adjacent lands." The problem with this definition is that it talks about "the site and adjacent lands." By doing this, this directs the board or the minister's employee or whoever to look more specifically at the lands around the pit.

What we are interested in is the broader environment of Ontario, so a first choice for a definition of environment would be the one under the Environmental Assessment Act because it is the most comprehensive. It takes into account the environment as people normally think of it—communities and the economic environment—so it is a very broad definition. If we cannot get that, then we would take the Environmental Protection Act's definition.

But I do not think there is a point in adding a third definition that is a combination of the Environmental Protection Act and what the government had before, because this would mean one more definition of the environment that the courts would have to interpret and that people would have to deal with. We really only have one environment in Ontario.

Ms. Bryden: Also on definitions, I have a supplementary. In section 23 under "wayside permits" it mentions that "'special project' means a temporary project that is of an urgent nature and for which no alternative source of aggregate under licence or permit is readily available in the vicinity."

There seems to be considerable concern about what the word "temporary" means. I notice further along, in section 31, it says that no wayside permit shall go on for any longer than the special project requires or 18 months at the most. I am told this is not adhered to. Do you think the present act will more precisely limit wayside permits to the 18-month maximum?

1440

Mr. Green: I would just like to point out for the benefit of members that section 23 has been amended. The answer to your question is that we still do not think it will address the serious problems that are occurring with



wayside permits right now in Ontario. They are abused, they are renewed several times and they are used when a permanent site would be more appropriate, so there are a number of problems with them.

Mr. Chairman: I would like to interject at this time, Mr. Green. Thank you very much for taking the time to come before the committee. Obviously, we could have talked a little longer and I apologize for that.

Mr. Green: Thank you, Mr. Chairman.

Mr. McLean: Mr. Chairman, I wonder if perhaps from now on we could cut off a little early so each party could have a question. I think it is fair.

Mr. Green: Mr. Chairman, I would love to answer the questions as well. I will be back for more if you want.

Ms. Bryden: On a point of order, Mr. Chairman: I agree with the member from the Progressive Conservative Party that there should be equal time for the three parties. Even if we do have to run over, they should get one question each.

Mr. Chairman: The guideline we adopted this morning is that we are going to give 30 minutes. I really think the people coming to make presentations should be able to use that time as they see fit. I am going to suggest, as Mr. McLean suggested, that they try to keep their presentations between 15 and 20 minutes to give everybody a chance for a question, but if the presenters choose to use up the 30 minutes I think that is their prerogative. This time I should not have allowed any questions, because we were pretty close to the time and I knew we were not going to be fair about it, but I thought, as you signalled me first, that there was something pressing you wanted to ask.

Our next presentation is by Arthur Ryan who represents the Ontario Road Builders' Association. Perhaps you would approach the table, Mr. Ryan. If you are bringing others with you, I would appreciate it if for the record you would introduce those people, too.

#### ONTARIO ROAD BUILDERS' ASSOCIATION

Mr. Ryan: I am Arthur Ryan, executive director of the Ontario Road Builders' Association. On my extreme left is Colin West, ex-president of our association and still vice-president of Armbro Construction. On my immediate left is Charles Lawrence, an ex-president of the association and president of Huron Construction.

We have a fairly brief brief and I would like to read it into the record. Before I do that, I would just like to read for the record the letter we wrote to the minister back in October when we had our initial review of this act. I think in substance, other than what we are going to say today, we still adhere to the basic principles of our comments here. What we said at that time was:

"Dear Mr. Kerrio:

"After initial review, it appears to our association that Bill 170 generally adheres to sound economic and environmental policies, consistent with good management of an essential nonrenewable natural resource. We are pleased to see that the economic value of wayside continues to be acknowledged

by your ministry, as we too are fully supportive of minimal extractions at minimum cost to taxpayers."

That is signed by our current president, Lee Smallman.

Our position has not changed in the sense that our basic concern, which we will explain in the brief, is that the viability of waysides be protected. The main clauses of the act we accept in principle, and we concur with most of the policies announced.

Now I will just read through the brief. The Ontario Road Builders' Association represents virtually all the major firms involved in constructing and maintaining Ontario's provincial highways and municipal roads. Comprising more than 160 companies and over 50 communities across Ontario, our members represent a large, labour-intensive industry working in an area that has a substantial impact on the economic viability of the province. We welcome this opportunity to present our very serious concerns and trust our comments will be useful to the standing committee on general government on its review of the Aggregate Resources Act and amendments, Bill 170.

The Ontario Road Builders' Association is concerned that the bill and amendments in their present form put at serious risk the availability at reasonable cost to the public of the limited resources of mineral aggregates in the province.

The mineral aggregates resource policy approved by the Lieutenant Governor in Council order-in-council 1249/86 of May 9, 1986, states the following in its background and principles of the policy. We have taken the liberty of actually transcribing the background and principles verbatim from that mineral aggregates resource policy and I would like to read them to you.

"Background: Mineral aggregates are vital to Ontario's economy. In 1980, for example, approximately 120 million tonnes or more than 14 tonnes of mineral aggregate per capita were used in Ontario." We have updated this: By 1987, that figure had increased to 185 million tonnes or 20.1 tonnes per capita.

"Although potential reserves exist in many parts of the province, a reduction in the availability of mineral aggregates is occurring as a result of: depletion of near-market supplies; effective elimination of some valuable mineral aggregate sources by other development, for example, housing, occurring over or adjacent to the deposits; and restrictive controls which make the establishment and operation of pits and quarries difficult.

"A scarcity of mineral aggregates is occurring within certain parts of Ontario. This results in increased mineral aggregate costs, whether through hauling the material from distant sources; through using more expensive substitute materials; or through using more expensive processing techniques to upgrade lower-quality materials. Such increased costs are ultimately transferred to the consumer. Therefore, it is important that sufficient mineral aggregate resources are available to meet the future needs of Ontario residents.

"The policy statement establishes mineral aggregate resources as a matter of provincial interest and concern. It includes specific policies to ensure that regard is paid to the importance of mineral aggregates and that the overall provincial interest is taken into account in any related planning action.



"Principles: The following mineral aggregate resource planning principles are recognized as the basis for the policies contained in this document.

"Mineral aggregates are essential nonrenewable natural resources. They should be recognized as important components in any comprehensive land use or resource management program.

"Mineral aggregates should be available to the consumers of Ontario at a reasonable cost.

"All parts of Ontario possessing mineral aggregate resources share a responsibility for meeting future provincial demand. Mineral aggregate resources vary in quality and significance. Demand for them varies depending on location and circumstances.

"Notwithstanding the need for mineral aggregates, it is essential to ensure that extraction is carried out with minimal social and environmental cost. The protection of the natural environment is of particular importance, as is the wise management of the province's physical resources. In this regard there is a recognized need to develop policy and regulatory provisions that: (a) establish good operating standards; (b) ensure rehabilitation and; (c) establish evaluation and approval procedures for creating new operations and expanding existing operations.

"A supply of mineral aggregates as an essential construction material is important to the overall development of an area. It is necessary to maintain sources of supply as close to markets as possible until such time as long-distance transportation may become feasible.

"Other land uses may in specific instances take precedence over aggregate extraction, including wayside pits and quarries.

"Wayside pits and quarries are needed on a temporary basis and often at short notice to supply mineral aggregates for certain projects of public authorities, such as roads, at minimum cost to the taxpayer. Consultation with municipalities will be followed to ensure minimal adverse impacts on the social and natural environment and to ensure effective rehabilitation. The Ministry of Natural Resources shall have regard for policies approved by the Lieutenant Governor in Council for any specific area of the province before issuing a wayside pit or quarry permit.

"Municipalities have an important role in planning for mineral aggregate resources and aggregate operations and should encourage the concept of extraction as an interim land use activity."

We believe the bill in its present form fails to recognize these resource planning principles and will substantially increase the cost of the resource to the public by effectively eliminating for ever the availability of many important resource sources.

Wayside resources, the need: In 1986 to 1988, 16.3 million tonnes of aggregate were used from numerous wayside resources in the construction of public highways and roads.

Wayside resources are normally too small to develop under a commercial pit licence. It is generally recognized that to meet the cost of engineering site plans, environmental impact studies, municipal demands on the site, etc.,

a minimum resource of three million tonnes is needed to support these costs and develop a market. Thus, wayside resources will never be developed under commercial licences.

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Wayside resources for highway construction are important to the public in that they are usually situated close to the project and thus minimize haulage distances.

Wayside resources reduce the need to unnecessarily speed up the depletion of commercial resources, particularly high-quality aggregates.

Wayside pits have historically played an integral part in the development of the provincial and municipal transportation system which benefits all Ontario citizens.

Given the controls and regulations under which they will operate, there is no doubt the economic benefit of waysides to the Ontario taxpayer far outweighs any adverse impacts on society or the environment.

As pointed out in MARP, the mineral aggregate resources policy, aggregate resources are nonrenewable, finite and becoming more expensive due to distance and restrictions. It is therefore all the more important that all aggregate resources be utilized in the most intelligent manner possible, and this includes waysides properly controlled and rehabilitated.

The owners of the wayside pits, usually farmers who have owned the land for generations, have every right to benefit from both the revenue accruing from the removal of the aggregate and the enhancement of this property for agricultural purposes.

Economic impact: Average annual saving to the public through the use of wayside resources is estimated at over \$7 million. That just reflects the actual savings in the so-called designated areas; if we were to extend that up into the northern area, where this act does not come into effect, that figure of \$7 million becomes something like \$18.2 million.

Bidding on contracts will be less competitive. Smaller contractors could be eliminated from the process. The availability of waysides allows a smaller contractor to go in and effectively compete against the larger commercial operators. Wayside resources eliminate the middleman. The project contractor deals directly with the owner, incurring only royalty, processing and rehabilitation costs. Wayside resources also reduce costs because they are usually closer to the project and reduce haulage costs.

Wayside resources, although usually small, do offer to the land owner an important source of income. These owners, as we have mentioned, are for the most part farmers who are second- or third-generation owners. The removal of gravel at wayside sources, along with proper rehabilitation, quite often results in more productive agricultural land.

Conclusion: We feel the bill and amendments in its present form will:

1. Ignore the public interest to satisfy minority self-interest groups.
2. Effectively eliminate the Niagara Escarpment as a wayside resource in spite of years of public hearings which determined wayside permits should be allowed.



Under the proposed amendments to the act, there is a provision on section 27 which says effectively that no wayside permit shall be allowed in the Niagara Escarpment planning area. The Niagara Escarpment planning area was defined in the Niagara Escarpment Planning and Development Act. It was developed a number of years ago and the guidelines and the controls established within that development act have always served well any problems that might have occurred with wayside pits. The elimination of that availability now and requiring a development permit, which would probably take two to three years minimum, effectively eliminates the possibility of waysides being used in that area.

We have double concerns with that, because we feel that an amendment which is put through as an amendment to this particular act is probably contravening the initial intent of the Niagara Escarpment planning act, where changes to that planning act were supposed to go through a process of public hearing and a lot more involvement than this particular amendment would seem to take.

3. Effectively invite and support more minority interest groups, such as those in the Niagara Escarpment, Caledon and Puslinch counties, to spread across the province, which will ultimately be the end of wayside resources.

4. Effectively eliminate uniformity of the act and regulations across the province by allowing for input by local municipalities and other ministries in the permit application.

5. Raise the cost of aggregates and put further strain on an already seriously underfunded provincial and municipal capital highway and road program.

If I might just expand on that for a moment, that is probably our association's major concern, in terms of the tremendous underfunding of the provincial highways and roads system in this province. There is a major problem in terms of the funding which has not materialized, the congestion which we are faced with today and the quality of the roads and the highways, which are literally deteriorating overnight. Any reduction in the present funding through increased costs is totally unacceptable in terms of the economic viability of the capital program of this province.

Our recommendation: That the committee insist on a complete review of this bill and amendments with a view to:

(a) ensuring that the mineral aggregate resource policy is preserved and that mineral aggregate resources are identified and made available for the public good;

(b) ensuring the uniformity of the act and regulations across the province;

(c) ensuring that all resource areas are properly mined, with reasonable consideration given to hours of work, haul routes, dust controls, etc., to minimize the impact of the operation on locally affected residents;

(d) ensuring that tonnage fees received by municipalities from these resources are used in their own road programs or those programs which will reduce associated impact on local residents;

(e) ensuring that minority rights do not impinge on the rights of all Ontario taxpayers.

I would just like to add a few extra comments in the sense of making comment on the previous presentation and some comments that were made initially. The process for wayside pits is a very tightly controlled process at the present time. Approval for wayside is handled in exactly the same way as approval for commercial pits. There is a process whereby the Ministry of Transportation makes recommendations for a project which is being built.

They go before the Ministry of Natural Resources, they go before the municipalities. There is a long, drawn-out process for approval by all parties before wayside pits are allowed to go into the bidding process. Any implication that waysides are sort of an easy way to extract minerals through a less consultative process is totally wrong. They are extremely well controlled. Economically, they are much easier to rehabilitate than a commercial pit. They turn over much more quickly. Effectively, they do an excellent job, and economically, the impact is tremendous in terms of if the availability was not there.

As we mentioned initially, in theory, we approve in principle of the bill. We approve of the fee structures. We agree municipalities should be entitled to fees for tonnage. We agree with most of the principles. Our concern is the number of amendments that have come through at the end, the 40 amendments, and we agree that perhaps only 17 of them have any real value. It was our concern particularly about the Niagara Escarpment, about some other limitations built into those amendments which we felt were sort of pushed through fairly quickly without enough input, and that is why we are down here. But we are down here very quickly, without any real deep analysis of some of those problems, so that our comments at this point have not been totally analysed.

In general, our principles are still the same. We feel it is extremely important that the philosophy and the economic viability of waysides be retained by this province.

Mr. Chairman: Thank you very much. I have quite a list of people who wish to ask questions of you, Mr. Ryan. In fairness, I think I should pick up where we left off the list last time. Mr. Pollock.

Mr. Pollock: Who are the people who are dissatisfied with wayside pits? Is it the farm community or is it the rural residents who move out into the rural area?

Mr. Ryan: It is the rural residents, for the most part. Specifically, if you are taking a situation like Caledon Heights, you have a situation where the aggregate resources were always there, and people have moved in there. People living in country homes suddenly object to the fact that there may be gravel pits used in their area. It is not the farmers. The farmers know the resources are there, they are available for them, the rehabilitation has been good. It is local residents. It is a not-in-my-backyard syndrome, quite frankly.

Mr. Pollock: I see. Basically, the farmers are fairly well satisfied with the rehabilitation work carried out by the aggregates industry.

Mr. Ryan: Very much so.

Mr. Pollock: You mentioned twice in your brief that it was a nonrenewable resource. Is that totally so? If there was an old, large cement building, can that not be ground up and used again? Is that totally impossible?



Mr. Lawrence: I can answer that. It depends. The recycling of concrete or asphalt today is economically viable depending on its location with respect to the contract on which it is going to be used. There are instances today where you can put down a new asphalt structure at a cheaper price than you can reclaim the old, truck it to a site and recycle it.

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Mr. Pollock: Because of the distance?

Mr. Lawrence: Haulage distance.

Mr. Fleet: My understanding of the future of the industry is that you are probably facing increasing costs because you are depleting the sources that are closest to the market and, as you go farther away or get poor-quality stuff, you tend to drive the costs up in any event.

What I have a hard time understanding in any effective way is the kind of assertion where you say that the bill—and I take it it is the amendments you are worried about in particular, or other amendments that this committee or the Legislature may approve of—is going to tend to raise the cost of aggregate. You have not brought forward any studies, you have not given any estimates. I tell you frankly, it is very hard to evaluate what that means when groups come forward and say something is going to cost more all the time. Just the bland assertion, frankly, does not really help me very much to understand what kind of money you are talking about. Can you give some further detail about what you are talking about?

Mr. Ryan: The figure we mentioned, the \$18.2 million—there was \$7 million in the brief and we have added \$18.2 million—was given to us by the Ministry of Transportation. The average saving using a wayside pit as opposed to a commercial pit is \$2 a tonne and that is for provincial highway work. For municipal work it could be a little less than that, but that is the average price per tonne of the volume which is used at the present time.

Mr. West: I could give you a couple of specific examples, if that might help. On two projects that our company did in the area northwest of here, one of them being Highway 410 and the other being a region of Peel road in Caledon, the pit in question was the same one. It was a repeated use, which is another aspect of the amendment which we have some difficulty with.

On the Highway 410 and Steeles Avenue project, which was an MTO project worth about \$7.3 million, the saving between using the wayside pit and the local commercial sources available was \$570,000 on a \$7.3-million project. That was in 1987, finished in 1988. On the region of Peel job in Caledon, which was a smaller project, a total bid price of around \$730,000, the actual saving between the commercial and the wayside pit in that instance was \$61,000. Again, those numbers were between \$1.50 and \$2 a tonne.

I might add that the owner of the particular pit in question is a third-generation farmer on the land. He will be planting in the part of the pit that has been used and rehabilitated. He made some comments to a group of Caledon councillors and I think MNR people went around on a bit of a tour there last fall. He, I think, was quoted as saying that the land was in better shape for him to use agriculturally than it had been before. It was an esker, which is a mound of gravel, running through his field and in effect, besides putting some money in his pocket, saving the taxpayers of the province and the municipality a rather substantial amount of money, it improved the quality of

his farm, if that helps.

Mr. Fleet: Yes, it does.

Ms. Bryden: I notice everybody is referring to the amendments as part of this bill. I think we all should be aware that those amendments have not yet been passed and may not be passed by this committee, so that we cannot really rely on the wording in those amendments.

I want to ask the deputant, would you be seriously concerned if we put back into this act some of the clauses of section 12 that were in the previous Pits and Quarries Control Act, to which Mr. Green referred and which he thought should be put back in. That is on page 5 of the—

Mr. Ryan: That was the previous one. We do not have that.

Ms. Bryden: It was the foundation. You did not have that, but anyway let me read it to you. He wanted to add—and this is in the old act; these are among the guidelines that should be considered by the minister in granting a licence—"the effect of the operation of the pit or quarry on the environment and the preservation of the character of the environment."

The words "and the preservation of the character of the environment" have been dropped from this present act. It just says, "the effect of the operation of the pit or quarry on the environment." This adds a word about preservation of the character of the environment, which I think is important.

Then another clause, 12(1), would add "the availability of the natural environment for the enjoyment of the public." That is not mentioned in the present guidelines that the minister must consider. He is only supposed to consider the need for the aggregates or, to some extent, the effect of the operation on the environment and the community, but not those two items that I have mentioned, the preservation of the character of the environment and the availability of the natural environment for the enjoyment of the public.

Would you be upset if those two clauses were added to the guidelines that the minister should follow in granting a licence?

Mr. Ryan: I think so, in some sense, because I think the first comment is sort of an open door. It limits what can be done in terms of rehabilitation. It may well be that a better rehabilitation may produce a different format. That is just off the top of my head. I really do not know what the intent is of those sorts of comments.

Mr. Ballinger: You must remember this is on the record.

Ms. Bryden: Yes.

Mr. Lawrence: Most wayside resources, if I could interject here, are returned to the character in which they were, any that I have been associated with. If it was farm land when we went into that area, it was returned as farm land.

Ms. Bryden: Mr. Green's group felt that the rehabilitation requirements were not spelled out enough. They may not have to be exact rehabilitation to the previous use, but certainly it must protect the environment and the community.



Also, you mentioned that in all cases you thought a licence should be granted if there were minimal adverse effects on the environment. How would you define "minimal"? It seemed to me that you were allowing for some adverse effect on the environment as having paramountcy over other considerations, and your consideration is the need for aggregates. What would you consider minimal adverse effects?

Mr. Lawrence: "Minimal" would come into play because most wayside resources, for the most part, are of short duration. They might be three or four weeks long. They are used mainly in connection with resurfacing of nearby highway systems and the actual time that the contractor is in there is of a short duration, so the impact on the local people would not be something that would be of an unduly long nature.

Most things today environmentally, with respect to any plants that are in there, have dust control requirements from the Ministry of the Environment and noise requirements and things like that. I do not argue that it does not change the character of people's living while that is going on. It is bound to.

Mr. Chairman: Could I interrupt? You have five more minutes in this presentation. I have two more questioners, so you will have to tighten it up a bit.

Ms. Bryden: I just want to make one comment.

Mr. Ryan: I would just like to add to what Mr. Lawrence was saying, though. Maybe I gave you the wrong answer to the first question. We fully support the best environment situation that the people in the area can expect. There is no problem with that. We do not have anything in mind when we do any rehabilitation process. We do not think of what is the cheapest way to go; we go with the best, the most efficient and what the local residents will enjoy the most. That is all we are really saying.

Ms. Bryden: They say that you never really close a lot of your environments, though. No further reply is asked for.

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Mr. Ballinger: There is an old saying, which I think goes: As things change, they remain the same. Just sitting here this afternoon, based on the two presentations—I sat on the original committee that travelled across Ontario on behalf of the minister back in the early 1970s. There was some point that Mr. Green made that we were using an outdated document as the base for our decisions as a ministry or as a government, but I can tell you that some of the arguments that were made there are being made again today in the same amount of time. I found it interesting in your proposal that the same arguments that were made back in the early 1970s are being made again by yourself. That goes back to my original point. As things change, they really remain the same.

I want to ask you a couple of questions actually. I was interested in your conclusion on page 7. I think one of the problems that Mr. Kerrio has had as the Minister of Natural Resources, on behalf of his ministry, is that in government, legislation becomes the art of compromise. In fact, you take all positions.

In this particular case, I think Mr. Kerrio has done a good job on behalf of the ministry of taking all the submissions that have come before

him, based on a piece of legislation that has been promised for some 15 years. As a former mayor of a municipality, the township of Uxbridge—and its record speaks for itself in dealing with the aggregate industry—I looked at your position as the opposite extreme from that of the Foundation for Aggregate Studies. Where they want more controls, you want less. I was surprised, in your conclusions, that you believe the bill and the amendments ignore the public interest to satisfy minority self-interest groups. I could probably debate that with you for several weeks over a cup of tea.

Going over to page 8, on your point about number 4, which as a former municipal politician I again would take issue with, you make the statement that the amendments and the act in its present form effectively eliminate uniformity of the act and regulations across the province by allowing for input by local municipalities and other ministries in the permit application.

Mr. Chairman: Are you going to ask a question, Mr. Ballinger?

Mr. Ballinger: I am leading up to that. I did not come here to argue, but I think, quite frankly, our role here, as a government especially, is that we are trying to enact legislation—the minister is—that provides for recognition of the industry, which he does and which I believe this bill does, as well as recognize certain rights of individuals in the province.

I think all groups have to agree that there has to be a middle ground. On balance, if you had to choose any specific amendment that is currently before us that you believe impedes the opportunity as an industry, could you give me some specific one that you find, I will not say offensive, but unworkable?

Mr. Ryan: Yes, the reference to the Niagara Escarpment. I will read what the amendment says in subsection 27(3):

"Despite subsection (1), no wayside permit shall be issued for the site in the Niagara Escarpment planning area, as defined in the Niagara Escarpment Planning and Development Act, unless the location of the site complies with a development permit issued under that act."

That effectively wipes it out. To get a development permit for a wayside pit takes so long that it effectively wipes out the availability for anyone who wants it.

Mr. Ballinger: But don't you believe, sir, that—I am sorry. Is there another speaker after me?

Mr. Chairman: There was, yes.

Mr. Ballinger: Then I will not take his time. I have no intention of doing that.

Mr. Chairman: You have already taken the time. We are really out of time. Did you want to ask a question, Mr. McLean, a short one?

Mr. McLean: It was exactly that last question that he was getting at. I was just curious why, in the first reading of the bill, in section 27 there was no mention whatsoever of the wayside permits with regard to the escarpment land. I see the ministry, in its amendment, has brought it in and makes it very explicit with regard to the escarpment. I was wondering why the ministry all of a sudden changed its mind. What was the reason for it? Perhaps



the parliamentary assistant might have the answer to that.

Mr. Chairman: Do you want to respond, Mr. Ballinger, or may I thank the speakers?

Mr. Ballinger: I would certainly be pleased. Again, I think it goes back to the point I originally made this morning, Mr. McLean, that what the minister has attempted to do is take a look at all of the arguments that have been put forth. The minister has two options. He can come in here on second reading with no consideration whatsoever for any of the positions that have been brought forth and have them discussed here at the committee and then make a decision.

In this particular case, because of the number of submissions that the minister received and the importance—all of these are considered important. Your brief is considered important. I can tell you of the importance of the industry in my township and now in many of the townships within my riding. What the minister, I think, has done is addressed those areas of concern which I think are reasonable for four or five specific groups.

I support this particular one about including wayside pit applications so that those people who live in that area who feel they do not have access to a public process now have it under the development permit.

Mr. Chairman: I think I should thank you very much, Mr. Ballinger. As well, I would like to thank Mr. Ryan and Mr. West and Mr. Lawrence for their presentation. It has been very helpful.

Mr. Ryan: Thank you for your time.

Mr. Chairman: Our next presentation will be by the Conservation Council of Ontario. I understand David Hardy, Ed Hanna and Glenn Harrington will be presenting. We will take a few minutes to allow the gents presenting now to move out and you to move in.

#### CONSERVATION COUNCIL OF ONTARIO

Mr. Hanna: Thank you, Mr. Chairman. My name is Ed Hanna. I am the chairman of the ad hoc committee of the Conservation Council of Ontario, set up to review the Aggregate Resources Act. On my left is the past president of the council and an active landscape architect in the field of aggregate rehabilitation.

Mr. Chairman: Could we have his name, please?

Mr. Hanna: I am sorry. Minor detail. Glenn Harrington.

Mr. Chairman: So it is Glenn. Okay. Thanks.

Mr. Harrington: Dave Hardy sends his regrets.

Mr. Hanna: Mr. Chairman, before I begin, you said that we have 30 minutes. I am really at a loss over how to deal with 15 years of involvement in the aggregate industry and reviewing legislation and whatever in 30 minutes. I understand the volume of paper and the time that all the people in this committee are faced with. We have prepared two written submissions to the committee.

The written submission that you received this morning was the original submission that was submitted to the government. It is some 16 or 17 pages long and it would take me, I am sure, a good hour and a half to sit here and discuss it with you. I am obviously in the situation that we are going to use those 30 minutes and we hope we do not offend the committee by asking you to read it. We will not have the time to go through it. I had thought that the committee would have read this presentation and that what we would be talking about would be the amendments.

I appreciate what Ms. Bryden has said, that those have not been passed and it is up this committee to bring them forward to the Legislature. But we have looked specifically at those amendments because, in our understanding, that was the government's response to many of the submissions that were made.

Mr. Chairman: Could I interject at this point for a moment, please?

Mr. Hanna: Is this off my time?

Mr. Chairman: I gave you an extra minute.

The complete discussion will be in Hansard. I am sure that Bud Wildman, who is the critic for the New Democratic Party, will want to read what is presented. Some of us have read the submissions. Your group is one of the nine that were good enough to submit umbrella reports to the committee.

It should have been the standing committee on resources development at that point in time; but those of us who are following the Aggregate Resources Act have been privy to those reports. We decided to invite the nine groups of people that were umbrella organizations to have a limited period of time before the committee just to have one last shot at it, particularly because of the number of amendments involved.

So do not feel badly about addressing the amendments, because we will be getting up to speed as a group, even those who have not been as interested as, for example, Bill Ballinger, who has been in the aggregate industry over the years.

Mr. Pollock is the critic for the third party, and I am sure that—

Mr. McLean: On a point of clarification: Have you had a copy of the amendments?

Mr. Hanna: Yes, we have. The simple answer is yes, but it was very difficult to get them.

Mr. McLean: When did you get them?

Mr. Hanna: I got them on Thursday.

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Mr. McLean: I find it very difficult to deal with a bill such as this with 45 amendments when the people making presentations have not even had a chance to analyse them. It is totally unacceptable.

Mr. Ballinger: You can make that point all you want, Mr. McLean—

Mr. McLean: Well, I just made it.



Mr. Ballinger: —but it really becomes, as far as the deputants are concerned, a question of priorities as well. The government has priorities as well.

Mr. McLean: They had lots of time to amend it.

Mr. Chairman: I think I should interject at this point. Because I was interrupting you in your presentation, you will be given equal time.

Mr. Hanna: I hope you will be as lenient when I go over, sir.

What I would like to do is to deal with the presentation that you received, dated March 28. I believe that has just been circulated to the committee.

As I say, I would make the offer at this time, and I make it very sincerely: The conservation council has put an extensive amount of effort into this piece of legislation, and recognizing the time limitations you face, we are willing to come back here and discuss this at length with this committee, because we feel it is an important piece of legislation in this province.

I will simply follow through this quickly page by page, if I could, if everyone has it in front of them. I apologize to the audience for not having provided copies to everyone, but I will try to capture it as best I can for those people.

First of all, what is the Conservation Council of Ontario? Many of you may know that we were established in 1952. It is a coalition of organizations and individual members and it represents a broad cross-section of society. We are not simply—how shall we say?—the minority interest groups. We represent everything from labour to many industrial organizations. There is a broad representation in the council.

The total membership includes 32 organizations which represent over one million members, plus we have approximately 50 distinguished individual members. The common element is that we all have a keen interest in advancing conservation of our environment.

A brief summary of our involvement with Bill 170: The CCO has been involved since 1974 with the aggregate industry and the legislation controlling it. I believe that we are the longest-standing and probably one of the main groups of environmental spokespersons on this issue.

The CCO has been actively involved in many of the aborted attempts that I am sure this committee is only too familiar with in terms of revising the current Pits and Quarries Control Act. With the introduction of Bill 170, we struck a specific committee and I was the chairman of that committee. As we have already discussed, an in-depth brief has been prepared and there are over 40 recommendations in that brief. I believe the committee members have that before them. We have met with the ministry staff to briefly discuss some of the key points and we prepared the supplement to come and meet with you today.

I would note one thing, and perhaps I am a little bit presumptuous in expecting this, but we prepared and put an extensive amount of effort into our response to the ministry in the attempt to advance this legislation and we tried to do it in as constructive a way as possible. We have received no written response in any manner whatsoever from the ministry, responding why it disagrees or agrees with the recommendations put forward. We can only infer

what their conclusions are by the amendments that have been brought forward to the Legislature.

The purpose of the supplementary review: I would say, first of all, that the review we submitted to the minister was unanimous. It was unanimous across all member organizations in the Conservation Council of Ontario. I would also say to you that is somewhat unique. We represent a broad cross-section of interests and it is very rare that you get unanimous consent to any position paper we bring forward. That is not to say there was not a lot of discussion in coming to that conclusion, but we did come to a conclusion that everyone unanimously supported.

I would say the amendments obviously have not received the same level of discussion since because of the time involved, but I will say to you that what we are presenting to you today will be reviewed extensively within the conservation council. I have reviewed it with some members of the executive and they are in support of what is being said. The CCO's position, however, remains unchanged with respect to the original submission that was presented to the government on December 15, 1988.

I think I will not deal with the backgrounder. I will simply say that we were very—how would you say?—ecstatic when we read the backgrounder in expectation of what we would see in the amendments. We did get the backgrounder, by the way, although we did not get the amendments, and it sounded like things were moving forward. We did not feel that we had moved as far forward when we saw the actual amendments themselves.

What we have done in the remainder of this brief is to go through each one of the amendments individually and respond to those as they occur. You will note that we did not respond to all amendments. Some of the amendments are simply wording and housekeeping amendments and we did not feel it was worthy of this committee's time to talk to you on those matters.

I would say also at this point, before I go on, that this presentation is structured around the amendments. I did not come here today to try to highlight to you what I thought were the key issues. I was trying to respond specifically to the amendments. If I were presenting this to the committee to have the maximum impact, I would not have followed this format, but I want to premise what I am saying by that, because it is important in terms of the fact that we have really followed the path of the ministry, if you will, in the sense of following the amendments rather than setting our own course and trying to identify to the committee what we feel are the key issues.

On subsection 1(1), the new definition of "environment," we see this new definition as being basically the same as the original. I think this committee is only too aware that this is an environmental piece of legislation. While it has impacts on industry and various other sectors of our society, the main purpose of this act is environmental.

We have an Environmental Assessment Act. It is the cornerstone of environmental legislation in this province. The CCO has recommended that the Environmental Assessment Act definition be adopted in the Aggregate Resources Act and we see no reason why we should make, as I say, the environmental legislation of this province any more complicated by having a new definition of "environment."

On clauses 8(1)(k) and (n), application requirements, this is basically a housekeeping amendment, but it raises a point that was in our original



review. I would note to the committee also at this point that I have tried to put page references, cross-references to our original review to make it easier for you to see specifically where it refers back to the December 15 submission we have already made to the ministry.

The concern that this particular amendment raises is the matter of inconsistency and redundancy. I am sure you are only too aware, if you have read—I am sure you have read Bill 170—of the numerous places where this requirement for a site plan is listed; it is probably one that you have seen many, many times. There is no reason, in our view, that this should not be put in one appendix, one schedule. That same list of requirements should be used for all applications. Why repeat it three or four times in an act? It only makes the act redundant and cumbersome.

On subsections 8(4) and (5), professional requirements, I would say to you this is the only place of any substance within the conservation council where we had extensive debate, and there is good reason for the extensive debate. However, in the submission that has been made to the government there is unanimous support, and the support is for the fact that there is no reason that land surveyors, professional engineers and, to a lesser extent, landscape architects have any particular claim to being able to prepare site plans any more than a number of other professional groups within our society.

By adopting that, you are in fact, if you will, jeopardizing the environmental protection objectives that I believe the government has and that this act is supposed to protect. If you truly have those objectives, then say specifically what requirements are required to prepare this type of application and make that consistent for everyone. Do not, if you will, doff the responsibility off to some third-hand party to make sure that the government's responsibility is taken care of.

On subsections 11(2), (3) and (4), public notification, the CCO recommended the need for signage and we are pleased to see that the government has adopted or is proposing to adopt this in the proposed amendments. Because we have recommended it, we obviously support it. We would note, however, that there are other public notification recommendations that have not been adopted, and while we support the particular signage amendment, there are other notifications that we have recommended that have not been taken into account.

On subsection 14(4) and section 67, use of municipal fees, we again made a recommendation, and the government has seen fit to bring that forward to this committee, that there should be a mechanism to target municipal portions of licence fees for appropriate uses. The amendment provides that opportunity—it does not say how that is going to be done—and I would say that we are looking forward to working with the ministry and the municipalities in developing an appropriate mechanism.

On clause 17(1)(c) and subsection 17(4), annual inspection and four-year review, we note that this is a good amendment in the sense that we are very much in favour of having clear, succinct and explicit legislation. Basically, what this amendment is doing is saying, "This is specifically what the annual inspection and the four-year review are intended to do." We support that entirely and would hope that all the legislation, to the greatest extent possible, is explicit in that respect. So we support that. That was, in fact, what we were suggesting these reviews should be used for.

I will move on. On subsections 23(1), (2), (3) and (4), wayside permits, it is obviously an interesting topic. There are a number of things I would like to respond to that have been made by the last delegation, but I think, in all fairness, I am going to hold on that; but I am quite open to any questions in terms of what has been said in the last presentation. I can only say that I do not necessarily agree.

The proposed modification is essentially a rewording of the existing act. We see no major, substantial move from where the act was when it was originally introduced in the Legislature. The only thing that has happened is that a new term has been introduced: a "temporary project," a term which you will note is lacking from the definition of terms at the beginning of the act and only further complicates and confuses. At least we had a definition for "special project"; now we do not even have a definition.

I would emphasize that the new wording in no way addresses the substantial concerns raised by the Conservation Council of Ontario with respect to wayside permits.

On section 26, tonnage to be removed, we see this as a move forward. It is one way of dealing with wayside permits in being able to specify the acceptable tonnage that can be removed. In this respect, the CCO supports the amendment. The CCO would recommend, however, that specific tonnage limits be placed on wayside permits in the act to prevent the problems alluded to in our original submission. Again, the need is to have as explicit an act as possible, and I hope the members of this committee will agree with that.

On section 27, wayside permit regulations, section 27 allows the Lieutenant Governor in Council to pass regulations with respect to this act. The use of regulations to govern wayside permits is less preferable. If we have an issue, let us have it out now; let us have it out on the table. Let us have this committee hear people's views on it and discuss it. If not, let us at least ensure that there will be public discussion of any regulations passed under this legislation. The guts of the act are going to be its regulations, and it seems totally unfair to the public and our sense of public involvement in democracy not to have public comment on them before they are proclaimed.

On section 30, wayside permit conditions, again the CCO supports any amendment, at least as far as it clarifies the intent and scope of the act. This amendment provides some clarification in that respect. The CCO supports it.

The amendment, however, does not provide any assurance that the substantial environmental concerns regarding wayside permits raised by the CCO will be addressed.

Mr. Chairman, how am I doing there?

Mr. Chairman: You are doing fine.

Mr. Hanna: I am getting close.

Mr. Chairman: I was glad to see the large print when I opened it.

Mr. Hanna: I will not comment; it will take up more time.

On section 58, fines, the CCO recommended an adjustment to the maximum fine and this has been adopted in the act, and therefore we support this amendment.



The CCO recommended against a minimum fine. It appears that that recommendation has been rejected by the government. The reason has not been provided to us.

On section 62, record keeping, the CCO recommended a specific limitation for record keeping, and there has been an amendment made in that respect and therefore we support it.

It looks like a lot of things have happened. In fact, we have not agreed with that. There are a lot more recommendations that we have made that are not addressed than are addressed and—

Mr. Ballinger: I wondered when you were going to get to that point.

Mr. Hanna: We heard my friend Mr. Ballinger's comment about compromise in legislation. There must have been a lot of compromising going on that we did not know about, because out of 42 recommendations, I think you will see in the summary, four or five were actually adopted by the government.

Mr. Ballinger: Four or five out of 17 is not bad, with the greatest respect. There were only 17 that were substantive.

Mr. Hanna: I do not argue with what is substantive; I am sure that is for the committee to decide. But I would say—

Mr. Chairman: Do not let Mr. Ballinger sidetrack you. Just keep right on talking, will you?

Mr. Hanna: I have had it happen before. Anyway, back to the recommendations not addressed.

One of the things I have already made reference to is that we have yet to hear why the recommendations the CCO made are not acceptable to the government. Whether that is reasonable to expect or not, I cannot say; but I can only say that there was a great deal of volunteer effort—and I emphasize the term "volunteer"; there is no commercial interest in this from anyone who has been involved in this—and we have received very little for that effort.

Also, the dialogue with the ministry is at a standstill. As a result, our dialogue now is with this committee. We would like to have had further dialogue with the ministry before we got to this point, but unfortunately that has not been the case. Despite the claims in the background, a great many of the Conservation Council of Ontario's concerns have not been addressed.

I will just indicate that I have given you a summary here of the issues that have been dealt with and not been dealt with. I will not belabour the committee. I think the summary is quite clear. There are five that have been adequately addressed. There are four that have been addressed in a way that we feel is inadequate, and 30-odd that have not been addressed in any respect whatsoever.

The last thing I would like to speak to is how significant the outstanding issues are that are remaining that this committee has to consider. The CCO—and I reiterate this, which is in our previous brief—wants to see a new Aggregate Resources Act. Let there be no doubt about that. We are not here to stall this act. We want to see it go forward as quickly as possible. But we do want to see an act go forward that we will be able to live with for the next 15 years. That, I think, is a reasonable time frame for you to use as a

planning frame for this act.

Also, you must remember that it is unreasonable to expect systemic changes at some point in the future, large-scale, essential types of changes that are in our original brief to this act. They are either made now or I can assure you that at least I do not think they will likely be made in the future.

I provide an example here, in closing, of the significance of some of the concerns that the CCO has brought forward. It is a minor one in the sense that it is just one anecdote in a whole variety of concerns that I could have brought forward to this committee, but because of its currency I thought you might find it interesting.

One of the things that we had raised in our original brief is the concern of rehabilitating land under water. Why the ministry is determined that we should not rehabilitate land under water is beyond us, particularly given the amount of money that is being invested in fisheries habitat rehabilitation in this province.

If we look at the final page of the submission, there is a recent article in the Northern Miner. It is a recent article regarding an extensive quarrying operation or pit operation—I am not quite sure what the term would be—for dredging aggregate material out of the bottom of Lake Ontario, and there is potential for growing elsewhere.

We have before us a major environmental concern, not one that necessarily says it is a bad proposition, but one that we want to have appropriate environmental controls on. With the act as it is currently stated, the Ministry of Natural Resources has no power under that act. It has power under other acts, but under the Aggregate Resources Act itself, as currently stated, it has no power to control the rehabilitation of any area quarried under the water.

Ms. Bryden: I appreciate very much your far-ranging brief. I think your final conclusion, page 22, is pretty important—that the proposed act is seriously flawed and requires large-scale changes. What bothers me is that you spent more of your time dealing with the amendments than with the substantive part of the act in other areas that were not amended. I guess a study of your brief will give us a better picture of where you consider it seriously flawed and where the changes are needed. I can certainly appreciate what you said about underwater development needing rehabilitation. That should be considered.

I think what comes out of your brief also is that you are very concerned about the amount of power given to the ministry through regulation. I, too, share that. I think legislation should be specific and that we should not be condoning an increase in more decisions to be made through regulation. Is it your impression that the new act does increase the amount done by regulation?

Mr. Hanna: Increase—that is a relative statement. Relative to the Pits and Quarries Control Act?

Ms. Bryden: That or even the original unamended version. Are the amendments going to make more be done by regulation?

Mr. Hanna: I would not say it makes more. The only change that I see in the amendments is that it makes more explicit what can be in the regulations. But I do not see any shift in terms of giving more to the regulations with the one proviso which is mentioned in the brief that I have



just gone through, where it is dealing with wayside permits where part of that is put off into the regulations. By and large, all the amendments have done is simply say, "These are the types of things that can be in the regs." Not even "will" be, but "can" be in the regulations.

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Ms. Bryden: Do you not think it is bad policy to put a lot of details into the regulations?

Mr. Hanna: We are unequivocal on that matter. We feel very strongly that this committee, the elected members of parliament, should be the people who are making those decisions and not orders in council by deputy ministers.

Ms. Bryden: You mention that public notification is not adequate, on page 10. Can you cite areas where there should have been more public notification in the process?

Mr. Hanna: I hesitate to do that. You mentioned that we have not dealt with substance of the act. I think I premised my original statements on the fact that we have not dealt with the substance of the act; you are quite right. I have come here under the assumption, perhaps inappropriately, that people had read this. Perhaps that is more than I should have expected.

There is extensive discussion in here in terms of public notification. One of the things, a minor thing, that might give you a flavour of the types of things we are talking about is when there are amendments, for example, to the licence. In some cases there is full circulation and in others there is limited circulation. If they are going to change the substance of the licence, they should have public notification, not just limited circulation within a small group of bureaucrats. That is an example but, as I say, the brief is fairly explicit and fairly comprehensive in the types of changes we are looking for.

Ms. Bryden: I might add that the opposition parties did not get the amendments until four hours before the second-reading debate started. We were not really able to deal with how the amendments affected the act either.

Mr. Hanna: I read Hansard.

Mr. Pollock: My question was along the same lines. I take it that the Lieutenant Governor has the right to more or less say whether a person gets a wayside pit without any discussion, whether it is in the act or not?

Mr. Hanna: I would not want to comment on that specifically at the moment, but it does raise an issue brought forward by the last presentation: if the wayside permits are currently under stringent controls, I see no reason for any problem in using the requirements in the act. In other words, if you are already complying with the act, it is no greater cost to comply with the act as it currently stands.

I would not want to answer that without giving it more thought, but my understanding is there are certain regulations. It is the regulations themselves, what you have to do to get a wayside permit, that the Lieutenant Governor has control over. For the actual issuance of a wayside permit, I believe that is the mandate of the minister himself.

Mr. Pollock: When you started, you mentioned you had a million

members and 50 distinguished members. Just who would they be? I found that a little strange.

Mr. Ballinger: There are two of them.

Mr. Pollock: Yes. Who are the distinguished ones?

Mr. Hanna: I am not a distinguished member. I am a representative of the Canadian Land Reclamation Association. People like myself represent organizations. What I would suggest, if the committee is interested, is that I will provide a complete list of all of the individual members and member organizations of the conservation council, if that would serve your purposes.

Mr. Pollock: It just caught my eye when you said "distinguished members."

Mr. Chairman: He just wanted an example of who a distinguished person might be.

Mr. Harrington: Simon Miles and Bill Andrews. Are those names familiar to you?

Mr. Hanna: Harvey Claire, who is heavily involved in a number of things. He is involved in the Ministry of Natural Resources, conservation authorities. As I say, we are quite prepared to bring forward to the committee the background of each individual member.

Mr. Pollock: That is fine. The way it was worded kind of surprised me.

Mr. McLean: Could I have a supplementary on that last question? It is very simple. Do you believe, from what you have observed in this bill, that the minister has too much power?

Mr. Hanna: I believe the minister has to have discretionary power. I want to make sure this committee understands that we are not of the view that the minister does not need discretionary power; we agree with that. I think the point is very much one of process and of providing appropriate direction. The whole idea of legislation is to get that fine balance of not being overly restrictive in terms of the minister's power, yet providing reasonable direction.

Our feeling, I can say, is that there is perhaps too much power, not in the sense that the minister should not give those permits—we are not trying to stop the aggregates industry—but that the guidelines and rules should be more clearly laid out and that he should be accountable to the public in terms of stating his rationale for a decision. I think that is as much the point of it as anything else: Why do you make the decision?

Mr. Fleet: I was interested in a number of your comments. Perhaps you can deal with three items, not necessarily today. First, with respect to regulations, perhaps you would like to get a look at the regulatory reform report and the government response and make submissions to the standing committee on regulations and private bills.

Second, I would be appreciative, and I am sure other members would as well— In some instances you are making suggestions about amendments, but neither in your original report nor in your supplementary report have you



really provided a sample of what it is you expect to see. One of the examples was that you wanted to see a different definition of rehabilitation, yet you did not spell out what it was you wanted. The to-ing and fro-ing can only go on for so long; if you do not spell out what it is, it is harder for us to cope with. Although it is a tight time frame, if you can provide that it would be helpful.

In the third category of things I was interested in, you indicated some disagreement with the immediately previous submission to this committee. I asked some questions about costs. Perhaps you can provide your views as to what the costs are involved, either commenting on evidence we heard or just general information.

Mr. Hanna: I am pleased you asked that last question. Before I answer, I would like to deal with the other two just for housekeeping to make sure we get it clear. Should we go away and provide a supplementary submission to the committee, a written submission? I do not know the procedures. I am really asking a procedural question here, how you want to deal with it.

Mr. Fleet: I am asking on a personal basis. I do not think we can—

Mr. Chairman: Anything you feel strongly about, if you put it in writing and submit it to this committee, we will distribute it to all the committee members and they may or may not take it into consideration in their deliberations. I read it, as David just clarified, that it was an individual request by himself for that information. He has a particular interest in the regulatory reform that is going on right now, and I think his interest is good, because that is one area where there has been a significant amount of work done in the last little while that you might be interested in.

Mr. Hanna: One other procedural question is when? What is the timing?

Mr. Fleet: I can talk with you, perhaps after these sessions, about some of the timing of that. I would also ask for some specific proposals your group may have about this act. I think, as a practical matter, if we do not see that within about two weeks, it is not going to make much difference, because we will have decided it.

Mr. Chairman: Our next sitting is three weeks from today, which is the 17th. It actually starts on the Monday.

Mr. Hanna: I am happy to have personal discussions with Mr. Fleet, but I will go through the clerk, provide it to the clerk and he can distribute it to all committee members.

Mr. Chairman: That would be my preference.

Mr. Hanna: I would like to respond, though, to the last question if I could, on the matter of costs. The last presentation gave you two numbers, \$7 million and \$18.2 million, as the potential cost saving with wayside pits. I think you have to look very carefully at those kinds of numbers. I believe one of the committee members—I cannot remember who—asked where the numbers came from. I think it was a very appropriate question.

Putting that aside and accepting the numbers for what they are, let's look specifically at what that cost saving possibly is. When that was said, I wrote down three possible ways that cost saving could be realized. One is longer haul distances. In other words, if you go to a commercial pit you have

to haul the material longer, with greater transportation costs, and that drives up the price. What we are talking about is \$7 million to \$18.2 million in haulage costs. I find that difficult to believe, but perhaps that is the case.

The second thing is higher profits. Somebody is gouging somebody. The commercial operators, supposedly, are raking off the top. I cast no aspersion on some of the people in the audience, but that was another conclusion one could draw from those numbers.

A third conclusion is diminished environmental protection. In other words, we are saving \$18.2 million by reducing environmental protection. That is the real environmental cost of having wayside pits.

I am not sure it is any one of those, quite honestly. I think there is the possibility of having longer haul distances; maybe not the second one in terms of the industry gouging, but I think certainly there is a component of increased environmental costs associated with wayside pits. I think the important point is that we are not in any way advocating that you do away with wayside pits. We are simply advocating that the controls be sufficient to ensure that you do not make the savings as a result of taking money out of the environmental bank. That is what we are trying to avoid.

As far as the competitiveness issue goes, I think that is a totally hollow argument. The reason it is a hollow argument is that everyone is faced with the same costs in submitting their tenders. Nobody gets a competitive advantage. The only way you get a competitive advantage is if you happen to get a wayside pit, by whatever way, nefarious or otherwise, and are therefore able to bid much lower than any of your other competitors because you have a wayside pit and you happen to own that piece of property. If everyone is playing by the same rules, there is no change in competitiveness.

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Mr. Chairman: This will be the last question. I erred in not advising you of a five-minute time.

Mr. McLean: You made 40 specific recommendations on January 20 to ministry staff. Were any of those recommendations included in the amendments that we have just received?

Mr. Hanna: I believe the answer to that question is in the submission I just made, on page 20. It is summarized there—the ones that were addressed, the ones that were inadequately addressed and the ones that were not addressed.

Mr. McLean: Do you have a reply to your request from them yet?

Mr. Hanna: No.

Mr. Fleet: I would like to ask a supplementary question in terms of the response. There was a comment made in a previous submission that wayside pits are approximately \$2 a ton cheaper than conventional commercial sites. Does that sound like a reasonable number to you?

Mr. Hanna: I am not in a position to say one way or the other. Unlike the committee, I have yet to see any substantiation of those numbers.



Mr. Chairman: I would like to interject to say thank you very much. It has been a high-powered presentation and I am glad we had some time for questions. You promised us we would not.

The Association of Municipalities of Ontario is next. Randy Hodge is the name on my sheet, plus Brad Clements and James Wales. Good afternoon. For the benefit of the committee, the gentleman on my left is Jim Wales and the gentlemen on my right is Brad Clements. Mr. Hodge is in the back row.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mr. Wales: I represent the part of AMO that deals with rural municipalities and I also have four gravel pits in the township. You all have a copy of the response that came from AMO.

The association welcomes the opportunity to address the committee with its views on the proposed aggregate act. The association brings to this presentation its position on Bill 170 as approved by its board of directors. The association will attempt to address those amendments to the bill which relate to AMO's concerns.

The association's support for Bill 170: In light of the improvements offered over the existing Pits and Quarries Control Act, AMO supports in principle the proposed Bill 170.

Suitability of production levy: The association supports the compensation of municipalities affected by aggregate activity. The association supports the "unconditional" nature of compensation. The association is concerned that the six cents per tonne levy does not accurately reflect the current costs of aggregate activities.

Review of the levy: The levy should be reviewed every two years to ensure that it accurately reflects the costs associated with aggregate activities. An evaluation of the appropriateness of the apportionment of the levy between upper-tier and lower-tier municipalities should be included in this review.

Definition of wayside pits: The association recommends that Bill 170 include a definition of wayside pits and that the lifespan of a wayside pit and the maximum amount of aggregate to be extracted be set out in regulations to the bill.

Definition of municipality: The association is concerned that the terms "municipality" and "municipalities" have been used in the bill, but that a definition has only been provided for "regional municipality."

Narrow definition of "environment": The current definition of "environment" in Bill 170 limits consideration to the site and adjacent lands. This narrow definition ignores the wider effects of aggregate activities. The goal of protecting the environment seemed weak in light of the limited definition of the environment in the bill.

On municipal exemption: Where a pit or a quarry is municipally owned, a municipality should be exempt from paying that part of the levy which will be returned to it.

On implementation date: We did this last fall so that we had better knock that one out, because we wanted January 1989 and we are already into the

end of March.

On licensing system for blasting: The province should introduce a licensing system for blasting.

On notification procedures: Notification procedures should include a posting at the site indicating that a licence application has been made and, subsequent to approval, a notice should be posted indicating that a licence is in effect, whether or not the pit or quarry is currently in operation.

On the licence suspension system: The association supports the licence suspension process, provided the control mechanism is so delegated as to provide immediate enforcement capabilities at the local inspection site.

Brad, do you want to continue?

Mr. Clements: I think my particular role here is to outline a couple of items, as well as make a few comments on the amendments. As you are probably aware, AMO is comprised of most municipalities in the province of Ontario. I am vice-chairman of the county and region section. Jim is in the rural section, as he indicated. There are other sections involved in the makeup of AMO, so that the recommendations you have before you are in fact the board recommendations that were approved.

The back couple of pages do have some addenda, which outline a few minority reports in the different sections. I think that is fair to point out. Along with that is the fact that, with regard to the amendments that we are predominantly talking about today, having just received them very lately it is very difficult for AMO, because of the size of our organization, to make concrete suggestions on all of those recommendations. We would love to do so, but unfortunately, as I think has already been indicated, we would need about 45 to 60 days and you want to get this process under way immediately.

I am going to make some comments on a few of the recommendation changes that have been put forward; certainly not them all and they are certainly not all-encompassing. If you wish to have AMO write a formal submission on the amendments—you will not have a formal submission at this point on the amendments themselves. For the most part the amendments do clarify some of the points that we have made, but in many cases they do not go far enough. I guess the main one is really in subsection 1(1), definition of "environment."

In our original submission we outlined our concern with it; and really, the inclusion that you have added to it, and the words "adjacent lands," have a connotation that is lacking in some ways. As you know, the truck noise away from the immediate adjacent area, farms affected, groundwater, aquifers that may be a mile or two away from certain types of quarrying operations more than from gravel pit operations: All of these have a habit of entering into the concerns of ratepayers with gravel extraction industries. I guess, as indicated earlier, even the Environmental Protection Agency definition might be the appropriate one to use to get all those factors out.

We certainly do support the amendment to clause 3(2)(1), which adds municipalities in there. Certainly there are some things here I want to support: not only criticize some of the amendments, but support some of the others. That is one case where you have added the municipalities. That is our prime function here: to make sure that municipalities are heard adequately on this item, and that is our main purpose, making sure that some of our concerns should be addressed, as we have indicated.



Under clause 8(1)(n), which deals with the proposed major roads, I think probably it could be more specific to address the specific roads within quarries that are travelled, such as by dump trucks empty and full, etc.; because they clang and bang and it depends where they are exactly in a quarry operation, but certainly the neighbours know what they are. Your amendment of "all existing and proposed major roads on the site" might be added to by clarifying the word "major" to include any roads which are frequented by a fair bit of traffic.

Certainly in subsections 11(2), 11(3) and 11(4) you have added the issue of the sign. That has been dealt with earlier. I think that is the proper direction. In fact, you might even, as I indicated earlier, go further than that.

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In subsection 14(4) we seem to run into a bit of a problem, in that our understanding when this process first started was that these levies, which would be coming to municipalities, would be unconditional, but in three particular amendments to the act, you tend to be very specific. This subsection 14(4) is one that is really taking away some unconditional components and adding a specified purpose. We are very concerned about that. AMO is on record many times about its concern with conditional grants. This also affects subsection 24(3) and clause 67(f). Farther on in the different amendments it also impacts in the same way.

We see clause 17(1)(c) as limiting municipal comment. It is probably just as well left at that. There seem to be only certain types of questions the municipalities will be able to respond to, so your amendment to clause 17(1)(c) is a great concern in that it appears you are going to restrict community or municipal input to the decisions. Subsection 17(4) does basically the same thing and our concern is equally valid there. How am I doing, Mr. Chairman? Am I going to catch you up on your time frame?

Mr. Chairman: You are doing fine for your half-hour. It does not matter what time we finish.

Mr. Clements: I cannot believe you would be able to sit here all day on the same topic. At least in my place you get different topics every so often.

Mr. Ballinger: Sometimes it is more enjoyable when you do one.

Mr. Clements: That could be, too. We have a good one tonight. However, on subsections 23(1), (2), (3) and (4), there have been other issues brought out about this, and we did not have much chance to go into detail on exactly what this meant. We noticed that the word "person" is used in subsection 23(2) which is not particularly consistent with the subsection before it, subsection 1.

Clause 26(e) relates to adjacent lands. Again, similar concerns would be that this needs to be broadened. I might draw your attention to the recommendation the county and region section made in appendix 1, page 12 of our original brief; item 3 predominantly, which actually says— Did I get mixed up here? I am sorry. That is item 4 in the county recommendations that could be perhaps worked into that particular one.

We support the amendment to section 26 because it does put a lifespan on

wayside pits; at least, that is our view of it today. I think that is positive. It also basically applies to section 30 that you have asked to be amended.

I guess that is really our quick run-through of some of the concerns that municipalities have. As I said, I would really like to formalize some of those concerns with your committee. However, there is a time factor that our association has difficulty in adhering to.

Mr. Chairman: Mr. Ballinger, Mr. Pollock and Ms. Bryden.

Mr. Ballinger: How much time is left?

Mr. Chairman: We have 20 minutes.

Mr. Ballinger: I will not take a lot. I am interested in your one viewpoint about the conditional versus unconditional levy. Two previous deputants both supported the amendment, the Conservation Council of Ontario as well as the Ontario Road Builders' Association. My background is municipal. Could we just sort of explore that? I am interested in the AMO position.

Mr. Clements: The AMO position is very clear. We do not want conditional grants, period. That can be said in many ways and is in many briefs in a generic sort of sense. So, in fact, AMO's position is very clear on that particular point.

Mr. Ballinger: I guess from the minister's point of view—again, we were talking about the amendments. There was some discussion in here today about how all of a sudden we appeared at second reading with some 40 amendments, 17 of which we consider to be substantive, I guess, if I could use the word. Most of them are just sort of cross-referencing.

Again, from the minister's point of view, he is trying to find that middle ground, if you will, realizing that there were all the various submissions from all the groups. He is trying to come to some sort of reasonable consensus that is acceptable to the majority. Obviously in your case, it is not.

Mr. Clements: In AMO's case, they are concerned about that particular change. Actually, I guess, perhaps to go further than that, our staff was always under the impression—discussing this over the time frame during which it was discussed, going right back to the original bill—that this would never be a conditional type of process.

This was the first time, when we saw these amendments today and on the weekend, that suddenly something appeared to have come into the way of that particular thought process that the Ministry of Natural Resources had apparently always forwarded to AMO staff.

Mr. McLean: There are two things I want to zero in on. One is the permit fees and the rate. You indicate in your brief that you are concerned about the six cents, whether it is satisfactory or not.

Are you satisfied with the procedure with regard to collecting that? I notice in the legislation that it goes to the ministry, then it goes back to the municipality and it says the minister may or he may not. That is what I have a concern about. Is it clarified enough for you to accept the wording of the legislation?



Mr. Wales: I guess we want to make sure that it comes straight through. Maybe it is not clear enough right now, but the six cents, yes. Maybe it was back when this was first brought in but, as you know, times have changed. I do not think it is enough maybe now.

Mr. McLean: I would like to see something in there that says that for every tonne that is taken out of that pit, five cents, six cents or eight cents shall go to the municipality, but I do not see that in here. That is where I have a concern. I was just wondering.

Mr. Wales: Without interfering with the road subsidy.

Mr. McLean: Yes, or anything else.

The other question I have is with regard to the minister and the municipalities. I am not reading in here that the municipality has a lot of input into the establishment of a class A pit. It says "the minister shall" or "shall be satisfactory to the minister," but I am not reading in here that the municipality has much input. From your perspective as a municipal politician, do you find anything in here that is unsatisfactory with regard to the municipality?

Mr. Wales: There should be more with the municipality having say in that, knowing what has happened in the past with the municipalities that are in that. Maybe the minister has too much power, from what the act is saying right now, but the municipalities should have more say, especially with zoning and rezoning.

Mr. Clements: Just on that, I think one of the recommendations was that a review be carried out every two years. That is cutting it down—sorry, that is the levy fee. But certainly I would concur that the ministry appears to have more support in this, as you indicated earlier, Allan. The municipalities have a concern with that, recognizing that the aggregate is a provincial—

Mr. McLean: The problem I have with it is some experiences I have had where the aggregate people would have their engineers, they would have all the professional people and they would make that application to the ministry. The minister would then approve it or perhaps look at it in a very positive way. The municipality then said, "Whoa, I've got four miles of road here that I'd like to make an agreement to have fixed up because it is going to ruin the road."

Mr. Ballinger: With greatest respect, they can only do that if zoning is in place.

Mr. McLean: I do not see anything in here in which the municipality can say, "This won't go ahead if I'm not satisfied."

1610

Mr. Wales: I just want to say a word on that. What has bothered us in the past is that the zoning did not mean a thing to the Ministry of Natural Resources. That is where I am concerned; there had better be some regulations in there so they abide by the zoning bylaws.

Mr. Chairman: Ms. Bryden, did you hear that?

Ms. Bryden: I am very pleased that AMO agrees with three or four other deputations we have heard that the definition in the current act or bill is completely inadequate and that we should get back at least to the Environmental Protection Act definition and possibly the Environmental Assessment Act. Of the ones we have heard this afternoon at least three or four suggested it was a bad move to go to a third definition of "environment."

Particularly, as AMO has pointed out, if you just say "adjacent land," you are cutting out the effect on lands that may be a step or several steps removed from being next door to the wayside operation or even to a general operation of aggregate extraction. I am glad you have that.

Also, you mentioned that the municipalities must be heard adequately. It appears that the act sets forth what is considered adequate and does not really involve very much public participation, public meetings. Is that your feeling too, that there should be more opportunity for the public to comment on applications for either wayside pits or for aggregate operations?

Mr. Wales: I might answer that. We have public meetings; we have had four already in my municipality, and we are not even to first base yet. We have the public participation without the bill.

I may say that I am glad to see something moving and the bill coming out. I know it cannot be perfect, but we have been waiting 15 years now for it and I am glad to see it moving on. But there should be some changes.

Ms. Bryden: Are you disturbed by the sections in the act which give the minister the power, once he is satisfied that the zoning bylaws and other requirements have been satisfied, to immediately issue—this is in the case of wayside permits—a certificate to operate and serve upon the clerk of the municipality or county the notice that, "The site is here and we have approved it, period." Do you feel there should not be more opportunity for the municipality to make comments after the minister is satisfied, or some sort of appeal of his decision that all the requirements have been satisfied?

Mr. Clements: I believe a couple of those amendments which I did not cover touched on that point. As I would interpret it, very quickly reading it, there is even less with some of the amendments coming through that would allow that process to occur. Added to that is a concern that in some municipalities, where there is a lot of extractive industry going on, there are in effect no bylaws.

Although that was not highlighted in the 11 recommendations from AMO or the points I raised on the amendments, that is a very crucial area where you have the Niagara Escarpment, which in effect has no zoning on it. Therefore, it puts a different slant on how you interpret this. I am very concerned about that point.

If you read it in the context that the Niagara Escarpment area, which comprises a big part of Ontario, has no zoning bylaw, then you can interpret this act in a couple of different ways. I hope you make sure that is cleaned up as well.

Interjection.

Mr. Clements: My interpretation of the reference to zoning bylaws is the only thing I am referring to: Where there is a lack of zoning bylaws, the minister shall—



Mr. Ballinger: I am sorry, Mr. Chairman, but the Niagara Escarpment Planning and Development Act is still in place.

Mr. Clements: Yes, but I do not know how this act is interpreted. It says, "Where there are no zoning bylaws, the minister shall," or something to that effect. That concerns me, because it does not just apply to a few unorganized townships in Ontario; it applies to a fair bit of Ontario.

Ms. Bryden: That is an area that you think should be cleared up. Overall, do you think this bill takes away a considerable amount of the municipalities' autonomy in deciding zoning bylaws or the other laws they shall have regulating pits and quarries?

Mr. McLean: Yes.

Mr. Wales: Yes and no. It goes both ways on that one.

Mr. Clements: You should have said yes.

Mr. Ballinger: There's a classical political answer: yes and no.

Mr. Wales: There is a real problem with the wayside permit. A lot of the residents are concerned. If somebody gets a wayside permit, how far is he going to haul it? You can get them within your own municipality, but then if they start hauling it out, they can come in and take it maybe 50 miles. That is what a lot of them are concerned about. It is a real problem, but I can see at least you are trying to do something.

Ms. Bryden: Do you feel that—

Mr. Ballinger: Excuse me, Mr. Chairman, I wonder if we could get a clarification from Mr. Scott as it relates to the process of the review by the municipality on the application for a wayside pit permit as proposed in the act. I think it is an important part, that in fact the municipality has that opportunity to comment on the wayside pit permit through the ministry.

Mr. McLean: For the class A?

Mr. Ballinger: No, no, for the wayside pit.

Mr. Chairman: Are you clarifying this, Mr. Scott? If you are going to, you will have to come to the microphone.

Mr. Scott: Okay. I will help in any way I can. With regard to the wayside permits, we do have a process in place at the present time. The new act would substantially improve that, having a much greater list of criteria that our minister would have to go through and review and check off and accept that he has made a detailed decision on that matter before he can issue a wayside permit.

At the present time, we do get the comments and we do not issue wayside permits without having written comments on file from the municipality as to what its views are on it. If we are going to go against the views of the municipality, we go back and talk to its representatives and say, "This is the reason that we feel we have to issue a permit or not issue a permit," because we have actually turned some down as well. We do go back and talk to them. There seems to be some confusion.

If there is a problem in an individual part of the province where one of our offices is not doing everything according to Hoyle, we would be glad to look into it and check on the matter. But there is a process; it is all written up as to what they are supposed to do. We feel that it is a reasonable process, but we still feel that the new act is required, because we think there is improvement required, not just with wayside but with a lot of different matters that the old legislation is not authoritative enough on.

Mr. Wales: Mr. Chairman, could I ask Mr. Scott a question?

Mr. Chairman: Certainly.

Mr. Wales: Is the Ministry of Transportation subject to the regulations?

Mr. Scott: Yes, it is. Their staff cannot issue wayside permits themselves. They have to come to us; they have to go to the municipality and personally talk to the municipality about any of its jobs, and then they come back to us and we get all the documentation from them. Then we still go through our normal process of applying all the different criteria in making our decisions.

Mr. Wales: Thank you.

Mr. Chairman: I have one further question that I would like to go to next. Mr. Faubert had a question.

Mr. Faubert: It will be rather short and Councillor Clements, I think, could address it. You are not alone in your concern about the narrow definition of the word "environment." I just wondered if you had a preferred terminology that AMO would like to see within it when it discussed it.

Mr. Clements: Yes. We have not been able to deal with that. We indicated in our original brief that it was too narrow and needed to be expanded. I cannot remember the details on the information we included in that, but certainly the amendment put forth does not do enough for our concerns.

Mr. Faubert: Do you feel that the definition contained within the act itself is too narrow?

Mr. Clements: It is still too narrow; it needs to be broadened out. If I may just digress for a moment, we have a situation where there is a water table that could be affected three or four miles away, and that is the type of impact that is very hard to nail down. Of course, the other side will be opposing that very vigorously, but it is a fact.

Mr. Chairman: Ms. Bryden, I think you had another supplementary.

Ms. Bryden: Just one supplementary. I am not clear who forces the closing down of a wayside pit when either the aggregate has been extracted or it appears that the operation or the project has ceased. Is it the municipality that has to go in and say, "You must close down and start rehabilitation," or it is the minister who should be enforcing that throughout the province? People say that a lot of wayside pits are just left there as a gape in the landscape.

Mr. Wales: Is it not the Minister of Natural Resources on the signs?



Ms. Bryden: Maybe it is, but it is not clear who is enforcing it because it is not being enforced everywhere.

Mr. Clements: I think, though, you may have helped to overcome some of those concerns by capping the wayside pit type of operation. Contrary to the MNR, they seem to go on for ever and ever and a day and there is never any let up to that location showing up in the file again.

Mr. Chairman: Are there any further questions? Thank you very much, gentlemen. We have one housekeeping item to handle before we adjourn as a committee, but I would like to thank Mr. Wales and Mr. Clements for coming.

Mr. Clements: I would like to thank you very much, Mr. Chairman. I hope that the committee will look at the briefs from all the municipalities because I am sure there are some other good ideas that AMO could not get around to agreeing to or did not see in its brief initially.

The only question I have is about making written comments on the amendments. Could I get some clarification on that?

Mr. Chairman: If you want to make written comments on the amendments, I suggest you do that and get them to the clerk of this committee.

Mr. Clements: Tout de suite?

Mr. Chairman: Tout de suite.

Mr. Wales: I would like to thank you and the committee on behalf of the rural municipalities for taking time to hear us today. Thank you.

Mr. Chairman: This morning it was pointed out to us that no one from the New Democratic Party could be available on Thursday morning. The best we can arrange is that Brian Charlton was good enough to offer to be half here and half in the Ombudsman committee. In view of that—

Ms. Bryden: I have further information on that. I have spoken to Bud Wildman and he has managed to arrange his affairs too. He can be here in the morning and I can be here in the afternoon.

Mr. Chairman: That is excellent, because I was just going to indicate we were going to reschedule the morning for the afternoon if we could, and we would be advising you of that by the end of the afternoon. So my understanding now is we do not have to reschedule anything?

Ms. Bryden: That is right.

Mr. Chairman: That is terrific. Is there any further business from the committee? Adjourned then until tomorrow at 10 o'clock. We will be locking the rooms so you can leave your things right here if you wish.

The committee adjourned at 4:22 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

WEDNESDAY, MARCH 29, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Also taking part:

Johnson, Jack (Wellington PC)

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Township of Puslinch:

MacRobbie, Archie, Reeve

From the Township of Erin:

Garrod, S., Solicitor

Clarke, R. M., Clerk

Armstrong, Duncan, Reeve

From the Ontario Good Roads Association:

Boshcoff, Ken, President

Silgailis, Vik, Director of Engineering, Regional Municipality of Durham

Herrema, Gary, Chairman, Regional Municipality of Durham

From the Canadian Portland Cement Association:

Waisanen, Peter, Regional Manager, Ontario Division

Townsend, Bill, St. Lawrence Cement Inc.

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, March 29, 1989

The committee met at 10:11 a.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: The chair recognizes a quorum. Our first presenters this morning are from the township of Puslinch. I would like to welcome Archie MacRobbie, the reeve, and Glenn Frosch, a councillor from that township. Gentlemen, the ground rules as negotiated with you are you have up to 30 minutes for your presentation. You may use any or all of that portion of time for what you wish to say. If there is time remaining, committee members are requested to ask any questions of clarification they might have. So without any further ado—

Mr. Ballinger: Whose riding is that, incidentally?

Mr. Chairman: I guess I am a little remiss at not recognizing a visitor to the committee. The member for Wellington (Mr. J. M. Johnson) is here as a guest to the committee because some of his constituents are going to be presenting today.

Mr. Ballinger: All right, Mr. Johnson. We will help you out whenever we can.

Interjection.

Mr. Pollock: His kind of help you do not need.

Mr. Chairman: A word of caution, Mr. MacRobbie: if Mr. Ballinger keeps interrupting, I would just keep on talking. Otherwise, your time may be used up.

TOWNSHIP OF PUSLINCH

Reeve MacRobbie: Mr. Chairman, I would like to bring you up to date on a little chronology as to what has happened in the events at Puslinch over the past number of years. I guess you, being a neighbour, know about as much about it as some of the rest of us here.

In 1974, the township of Puslinch circulated a resolution proposing a levy on aggregate, and at that time everybody thought we were out of our mind doing it. As a result of that, though, it at least got the government to develop an aggregate committee, appointed by the government in 1976. That committee's report, I believe, was finished in about 1978. It got introduced into the House, but it died a slow death in 1981.

The township of Puslinch again circulated another resolution in 1985, and out of the 638 resolutions that were sent out we got back 231, a 28 per cent response. Out of that response 142 municipalities, or 61 per cent,



supported the resolution and 89 municipalities, or 39 per cent, did not support it or just filed it for information.

As of last June 8, I was invited to meet with the deputy minister, Dale Scott, who is here today as well, Donald Currie from the town of Caledon and the mayor of Uxbridge, along with members of the aggregate producers. On June 17, I wrote a letter to the Minister of Natural Resources (Mr. Kerrio) and sent a copy to Jack Johnson, our MPP, as well as Rick Ferraro, who is our MPP for Guelph. The city of Guelph—you probably all know your geography well enough—is surrounded by the county of Wellington, so we kind of keep it in its place. Donald Currie and the mayor of Uxbridge also got a letter.

It was introduced into the House and it got first reading on June 27, 1988. Also, at the Association of Municipalities of Ontario convention last August, it was very well supported. The Association of Tourist Resorts in Ontario convention, which was held in the city of Guelph and was sponsored by the county of Wellington in October of last year, got good response.

In our opinion, we in Puslinch are going through a very expensive Ontario Municipal Board hearing that is going to set the rules and regulations for Ontario on aggregate policy. Since 1981 and the recommendations in the aggregate committee's report, inflation has risen dramatically. Consequently, the four cents a tonne is not adequate. Perhaps the county should have a share in this action, but I think it can speak for itself as well.

Let's not hold up the passing of this very important legislation on this account. It is my understanding that a framework is in place to amend this at any time without going through the legislation. I am speaking of the levy fee at this point; it is in the regulations area. The Ministry of Natural Resources and the OMB chairman have said that agreements with aggregate companies are not legal documents and that any regulations or restrictions a municipality wishes to hold should be part of the licence.

It is our experience this does not work, as MNR will not enforce the regulations as requested by the municipality, even if it is part of the licence.

Mr. Ballinger: All your fault, Mr. Scott.

Reeve MacRobbie: We have had that experience. I will let some of them speak to that later.

The ministry said it is the municipality's responsibility to enforce the regulations. As you may already know, we have heard of other municipalities within the county of Wellington that have had very unfortunate experiences. I speak of the township of Erin, another high-aggregate-producing municipality in the county of Wellington.

In Puslinch, we have no major concerns with the Aggregate Resources Act, Bill 170. The act has been studied to death for 10 years at least. In talking to the president of the Aggregate Producers' Association of Ontario, who is sitting here today, it is my understanding that the majority of producers are in agreement with the act. We now have a majority government, so let's get on with the job and show the people of the beautiful province of Ontario that we have the backbone to do something.

Along with this, I have the letter I sent to Mr. Kerrio last June 17, the resolution we circulated in 1985 and our response to the Aggregate

Resources Act, which was sent to the minister on March 6, 1989. I must apologize for not bringing enough copies for all the members. I did not know there were going to be that many here, but we are trying to cut down expenses as much as we can in Puslinch so we did not want to waste too much paper to fill up our landfill site.

Mr. Chairman: The clerk indicates to me that there are more copies on the way. As soon as they get duplicated, they will be distributed. If this is the end of the presentation part, Mr. McLean has a question to ask.

Mr. McLean: When did you get a copy of the amendments?

Reeve MacRobbie: Amendments to the act?

Mr. McLean: Yes.

Reeve MacRobbie: They have come out just recently?

Mr. McLean: There are 45 amendments to the act. I was curious how you say you support this bill when there are 45 amendments you have not even seen yet. There are some major amendments.

Reeve MacRobbie: I am supporting the Bill 170 that was sent to us, last fall I believe.

Mr. McLean: That is right, but there are 45 amendments to that bill.

Reeve MacRobbie: I have not seen them.

Mr. McLean: I would like to hear your comments with regard to the power a municipality has in this bill. I am concerned about it. Do you feel the municipalities have enough power or enough say to say, "Look, we want certain things, criteria, met"? It appears to me the minister has all kinds of power the municipalities do not have.

Reeve MacRobbie: That is true. The municipalities do not have enough power, I think.

Mr. McLean: How would you strengthen that or how would you change that?

Reeve MacRobbie: The minister could certainly give the municipalities more power.

Mr. McLean: You are saying then that perhaps the bill should be amended so that the municipalities would have more say?

Reeve MacRobbie: That, along with the fact of what we just heard at this hearing we are going through. If the municipality has no authority to have an agreement as a legal document, I do not think that is right either.

Mr. McLean: I find it very disturbing to know that there are 45 amendments to the act. Of the people we had in here yesterday, some got copies at the end of last week. It is a shame the government did not see fit to make sure that everybody who is making a presentation had those amendments. They had lots of time. And 45 amendments to a bill? That is really uncalled for. It is unbelievable. You will be surprised when you see the amendments.



Mr. Chairman: Mr. Wildman wants to make a comment too.

Mr. Wildman: I have a question. Reeve MacRobbie, are you aware that under this bill as presented, with the amendments, municipalities such as yours would be prohibited from putting more stringent controls on aggregate extraction within your municipality than the ministry puts on for the areas of the province that are designated?

Reeve MacRobbie: I have not seen any of these amendments, so I would find it hard to speak to that at this time.

1020

Mr. Wildman: Since you have just said in answer to my colleague that you would like to see the municipalities have more power, if the bill has the effect of preventing municipalities from having tougher regulations if they desire to have such on aggregate extraction in their municipalities, would you be in favour of that? Would you be in favour of a bill, as is presented before this committee, that would restrict municipalities from imposing stronger regulations than the ministry?

Reeve MacRobbie: Yes, I would definitely be opposed to the municipality not having the power to impose what it wishes to impose because nobody knows any better than the municipality itself what it needs.

Mr. Ballinger: Reeve, I am glad you are here this morning. Since you mentioned Uxbridge, I might add that I am the former mayor of Uxbridge. As well, in the audience we have another former mayor of Uxbridge, Gary Herrema, who is now the chairman of the regional municipality of Durham.

From a municipal point of view, there are a fair number of us here today who understand what Puslinch is going through today. We went through that around 1973-74 through the planning process, designating aggregate resources within our official plan so that future residents would have some understanding when they purchased property within the municipality that there were aggregate resource reserves there.

There are a couple of things to mention. I want to sort of clarify the amendment. I think Mr. McLean has every right as a member of the opposition to exploit the point about amendments that were circulated, that some of the presenters may not have had an opportunity to review them. There really are only 17 amendments to the act, but there is a fair amount of crossover in terms of cross-referencing within them. Although in substance there are about 17, I think there are about 42, to be exact.

I am interested in your comment number 10: "In our opinion, we in Puslinch are going through a very expensive Ontario Municipal Board hearing which is going to set the rules and regulations for the province on aggregate policy." What do you mean by that?

Reeve MacRobbie: What we meant by that is that the Ministry of Natural Resources is fighting a very tough battle against us. It does not even want to have us go through an official plan amendment, only a zone change to allow for a pit to be in operation. We think that is wrong.

Mr. Ballinger: But MNR is not the proponent of the application.

Reeve MacRobbie: Yes, it has been fighting very hard against it.

Mr. Ballinger: But it is not the proponent. It is not proposing the amendment. Its role is to give evidence as it relates to source.

Reeve MacRobbie: It has come out strongly to say that it does not believe an official plan should have an OP amendment to establish an aggregate operation.

Mr. Ballinger: I am sorry; I do not understand.

Reeve MacRobbie: The MNR has come out strongly at these hearings stating that it does not agree that an official plan should have an amendment to start an aggregate operation—

Mr. Ballinger: I will have to think about that one for a few minutes.

Reeve MacRobbie: —unless it intends to change every OP in the province.

Mr. Ballinger: Out of curiosity, when was your official plan originally enacted?

Reeve MacRobbie: The municipality adopted it in September 1986. The province approved portions of it on November 10, 1988.

Mr. Ballinger: Is there a specific aggregate resource policy within the official plan?

Reeve MacRobbie: Yes.

Mr. Ballinger: Are there designated areas outlining the reserves for the future?

Reeve MacRobbie: Yes.

Mr. Ballinger: On balance, when you look at the resources that are within your municipality, what portion of the known resource would you have designated within your OP policies?

Reeve MacRobbie: Probably 20 per cent of the municipality.

Mr. Ballinger: I want to make a comment, Mr. Chairman, and I will leave it open to someone else.

Mr. McLean: On a point of order, Mr. Chairman: Is Mr. Ballinger here as parliamentary assistant to the Minister of Natural Resources or is he here as a member of the committee?

Mr. Chairman: As a member of the committee; subbed on to the committee.

Mr. Ballinger: Is that okay?

Mr. Wildman: It is fine with me as long as you tell everybody to stand up when I come in the room.



Mr. Ballinger: I will not pursue the line of questioning, Mr. Chairman. I will allow some of the members to ask.

Mr. J. M. Johnson: I would like to congratulate the township of Puslinch and also the township of Erin that will be appearing next for being with us today and presenting some of their concerns. One of the problems Puslinch faces is the fact that it is going to be facing a \$250,000 Ontario Municipal Board hearing pertaining to gravel and the problems that relate to it. Possibly Bill 170, when it is enacted, will help to resolve some of these controversies.

But one of the problems stems from the fact that there seems to be a lack of co-ordination within the government itself. The Ministry of the Environment goes off on one tangent, the Ministry of Agriculture and Food on another and the Ministry of Natural Resources on a third. If they would co-ordinate their efforts it would save a lot of problems, OMB hearings and expense.

There need to be more definitive answers to some of the issues. One is land use. Is aggregate more important than agriculture? That is something that has to be addressed. We hide behind the OMB and allow it to make the determination, but I think the government has a responsibility to set that out in clearer terms than it has in the past. It is something that has to be addressed at some point in time. That is happening in Puslinch, Erin and the rest of the townships that have gravel. You experienced that in your own township.

That is an overall concern I have and I feel there is an obligation to address that, but on the specifics of Bill 170, the production levy is one example. It was set back in 1980 at six cents and surely the inflation factor alone would suggest it should be higher now. If the province does not feel it needs any more money, that is fine, but I believe the municipality should have some extra money. I think there should be extra money for rehabilitation. I am not talking about a lot of money; maybe an extra cent or two cents. But it should be uniform across the province. It should not be at different levels in different municipalities.

If the province as a whole needs aggregate and it has to come from townships such as Puslinch, then I submit that it makes sense to put a little money back in to help the township resolve its problems with roads and the disruption for people who live in the vicinity of the pits. If this money was put into some form that would help local people to live with the gravel issue, we might not have so many complaints about it. But all the people in the vicinity of pits see is the noise, confusion and turmoil that develops; they see no return. An extra cent or two in this direction would help to eliminate some of that concern.

Also, in the rehabilitation, if they were sure that after the pit was cleaned out and the gravel taken out, it was rehabilitated and a decent job done, they would be more content to live with the problems. Those are just a few of the concerns I have.

Ms. Bryden: I congratulate the corporation for bringing a sort of history of its attempts to get this law changed over the years. I think it is very useful to see that they have spent a long period lobbying and have been disappointed each year, even though there is large support at the municipal

level, certainly, for improved levies the municipalities will share in. I think they should also have money for rehabilitation.

I want to ask, are you aware that the new act does permit the ministry to establish wayside pits wherever the ministry likes, regardless of the zoning bylaws in your area and regardless of official plans as well? They just have absolute power to put a wayside pit where they want. They claim that the gravel is needed from that area. They also have the power, if a pit has presumably finished its initial contract to deal with as a special project, just to reissue the licence and keep it open indefinitely, although there is going to be under this act an 18-month cap on the licence for a wayside pit.

1030

Are you aware of the problem of wayside pits in your area, that they may be opened without your consent at all and that they may be continued without your consent up to 18 months?

Reeve MacRobbie: Yes, we are very much aware of that. We had a real episode about four years ago with a wayside pit. We had to go court to get it settled. The ministry issued a licence for an asphalt plant and a wayside pit which it did not have jurisdiction to do. It was proven in court that they did not have it. That was our worst episode with wayside pits. We are very much aware of wayside pits, though.

Ms. Bryden: Did you get that one closed?

Reeve MacRobbie: Yes.

Ms. Bryden: But of course you should not have to go to court on every single opening of a wayside pit.

Reeve MacRobbie: That is true.

Ms. Bryden: This is a part of the act that really concerns us in the New Democratic Party particularly, that this is giving too much power to the ministry regarding wayside pits and not enough concern for how they affect not only the nearby residents but the whole community and the transportation system and all that. Is this not a reason for demanding that at least that part of the act be withdrawn or changed radically?

Reeve MacRobbie: Other than the one bad experience we had with a wayside pit, we really have not had a problem with wayside pits. We had just that one bad experience.

Mr. Chairman: Can I ask a supplementary to this question? Just out of curiosity, approximately how many wayside pits in your township have come and gone since you have been involved?

Reeve MacRobbie: Four, I guess. One of them was an issue of where this licence was just reissued and reissued, but our reason for going along with that one was because it was cleaning up an old pit that was never ever licensed. It goes back 20 years ago and it was left there. They kept on taking material out and it finally got cleaned out and rehabilitated.

We really just had the one bad experience with a wayside pit.

Mr. Pollock: It was mentioned yesterday, one of the delegations said



that a farmer sold his aggregates to an aggregate producer. They came in and stripped off the topsoil, took out the gravel and then put the topsoil back on and he claimed that his land was better because of this, because they took out this mound in this particular field. What is your opinion of that? Have you seen situations like that where the land was actually better? What is your opinion of that?

Reeve MacRobbie: In our area, you would never make land better. I do not really know what you are speaking of, but our aggregate is in our level land where you can see from one end of the farm to the other. We have no aggregate in our drumlins or hills. I think you are speaking of a case where they took out a hill and rehabilitated and made agricultural land out of it.

North of Guelph that would happen, but not south of Guelph. There is a distinct line there. South of Guelph, in our area, the gravel is in the level ground, our best agricultural land. North of Guelph there would be gravel in the hills, but we do not have it in our hills.

Mr. Pollock: I have done this myself. I did not take out gravel, but I have levelled off the land. It cost me hundreds of dollars to do it, but I made the land better, as far as I was concerned. Either that or I would not have paid out that money. It was not a situation of taking out gravel, but I have done this sort of thing myself, so I was a little concerned and listened with quite an interest when they said it actually made the land better and I could relate to it. That is why I may be asking the question.

Reeve MacRobbie: I believe that could happen, but that would never happen in our area.

Mr. Pollock: It would not, because basically you are a level township.

Reeve MacRobbie: There must have been more money in farming when you did that than what there is now.

Mr. Pollock: This hill was so high that I could not climb it with a tractor. That is why I had to do it.

Mr. Ballinger: Those old McCormick's weren't any good anyway.

Mr. McLean: It is my understanding, and you say it is your understanding, that the framework is in place to amend this bill at any time without going through legislation.

Reeve MacRobbie: The tonnage levy.

Mr. McLean: Oh, you did not say tonnage levy.

Reeve MacRobbie: That is what I meant by what I said.

Mr. McLean: Okay, that is fine.

I just want a clarification, Mr. Chairman, on one of the amendments. It is on subsections 71(7) and (8). Perhaps somebody from the ministry can clarify it for me. It says: "I move that subsections 71(7) and (8) of the bill be struck out and the following substituted therefor:

"ss.7(3)(a-c), 9, 11(2-9), 12, 60 do not apply

"(7) Despite subsection (1), clauses 7(3)(a), (b) and (c), section 9, subsections 11(2) to (9) and sections 12 and 60 do not apply to applications made under subsection (4).

"Nonapplication of ss.11(2-9), 60 and waiver of s.9

"(8) Despite subsection (1), subsections 11(2) to (9) and section 60 do not apply"—

Mr. Chairman: Can I interject here, please? Whoa.

Mr. McLean: I would like somebody to explain that amendment to me.

Mr. Chairman: Realistically, I think your question is inappropriate at this particular point in time, because it really has nothing to do with what Mr. MacRobbie and his colleague are presenting.

Mr. McLean: I am sure he would like to know what that amendment pertains to.

Mr. Chairman: I am ruling the question out of order at this time, because we have got about two minutes left in this presentation. Quite frankly, I tried to copy down the numbers and everything and I noticed Mr. Scott was trying to do the same thing back there. The reason I said I think it is inappropriate is that there was just too much material there too fast. I think it is out of order at this time.

Mr. McLean: And they haven't got an answer.

Mr. Ballinger: We've got the answer; you just won't like it.

Mr. Chairman: I would suggest that you give a written comment with all of the numbers you quoted to Mr. Scott.

Mr. McLean: It is all in the amendment.

Mr. Chairman: I realize that, but you said it so fast that none of us got it.

Mr. McLean: It is the last amendment there is.

Mr. Chairman: I would like to thank you, Mr. MacRobbie and Mr. Frosch, for your presentation. Thank you very much for coming before the committee. If you have any further input, as I indicated before we began, we would be pleased to hear from you.

Our next guests are from the township of Erin. It is represented by Steve Garrod, Duncan Armstrong and Murray Clarke. If you gentlemen would approach the table, we would appreciate it. According to my listing, Stephen Garrod is the solicitor, Duncan Armstrong is the reeve and Murray Clarke the clerk. Welcome to the hearing. You have 30 minutes, as I indicated earlier. Were you here when I briefed the Puslinch group? Fine.

#### TOWNSHIP OF ERIN

Mr. Garrod: I am going to speak on behalf of the township and would be pleased to answer any questions the committee may have. We have prepared a brief and I believe copies have been distributed to the committee members.



Just by way of some brief comments of introduction, the township of Erin is a sister municipality, if you like, of the township of Puslinch in the sense that both townships are in the county of Wellington, which is just west of the town of Caledon in the region of Peel and just north of the region of Halton, as you would know, Mr. Chairman.

The township not only has rich aggregate resources; it also has an active agricultural industry, which reflects the rural base of the township, and also is facing some fairly strong development pressures because of the location, relative proximity to the Toronto-centred region. The township therefore has to take all of these factors into account in its planning policies, has tried to develop planning policies which balance the competing interests it is facing in terms of aggregate, agriculture, rural residents, development pressures and so on and believes that it has struck planning policies which balance those interests in a manner consistent with provincial interests and trying to give recognition to what it considers to be legitimate and appropriate local concerns of its residents.

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We are submitting, on behalf of the township, that we think that should be a guiding principle of any new legislation to govern the aggregate resources of the province. There should be a reasonable and proper balance struck between provincial policy interests and local sensitivities and needs. That is, I suppose, the general thrust of our submission to you today.

It is our submission that Bill 170, as it is drafted, does provide a legislative scheme that will ensure that provincial policy objectives regarding aggregate are met, but in some respects it falls short of ensuring that proper and legitimate municipal interests will be adequately balanced in the legislation.

Just taking you to section 2 of my brief, what I have tried to do in this section is just indicate some of the other provincial legislation which recognizes the important role that municipalities have to play in the planning for aggregate resources. I have quoted here from the Planning Act, subsections 34(2) and subsection 34(1), which give municipalities the power to make zoning bylaws, to govern certain land uses and which defines "The making, establishment or operation of a pit or quarry" as a "use of land for the purposes" of those bylaws.

It is very clear that under the Planning Act municipalities are given the power to make zoning bylaws to control the location of pits and quarries. Similarly, under the Municipal Act there is authority to pass regulatory bylaws to regulate the operations of pits and quarries.

Therefore, we are submitting that it is clear that the province intends that municipalities do have a legitimate legal and planning function in the control of aggregate resources and their location. This reflects, we believe, the reality that these types of operations can have very significant local impacts on residents and on municipal interests.

I think that provides some background for how you should be looking at this current legislation.

The last paragraph on page 2 makes reference to the provincial policy which has recently been published, as of May 9, 1986, the mineral aggregate resource planning policy, pursuant to the Planning Act. It is submitted that

when one reviews that policy, that policy also recognizes that there is a legitimate and important role for municipalities to play in the planning for aggregate resources.

I have just quoted here three of the eight main principles, which are articulated by that policy statement, the first one being that notwithstanding the need and the obvious importance of aggregate resources to the provincial economy, there can also be social and environmental costs, and the policy expresses the principle that those should be minimized.

It is our submission simply that, I suppose, to a very large extent the immediate social and environmental impacts, the nuisance-type impacts are more normally and more commonly matters that affect the local municipality more directly because they impinge on the local residents. The local municipality tends to be the municipality that hears those complaints first and must deal with those problems at the primary level.

The second policy I have quoted there, that "other land uses may in specific instances take precedence over aggregate extraction," I think is just simply a recognition that although aggregate resources are extremely important to the province, they are not given a complete override but there is a balancing that must occur in the planning process.

Third, there is a very explicit recognition in the provincial policy statement that "municipalities have an important role in planning for mineral aggregate resources and aggregate operations." I have quoted these three principles directly from the provincial policy statement.

It is our submission that the new legislation that this committee is addressing itself to, Bill 170, should be consistent with this thrust and should in fact reflect the important role that municipalities have "from a reality point of view," a practical point of view and from the point of view of what is recognized in other provincial legislation and in this provincial policy statement.

It is our submission that in order to accomplish this, Bill 170 should give some increased rights and responsibilities to municipalities, subject always of course to the overriding review that the Ontario Municipal Board provides, as it does provide in other planning matters that fall under the Planning Act.

What we are proposing are three specific recommendations, which I have set out in section 3 of the brief. Essentially, I think they are relatively modest compromises in order to provide municipalities with some more immediate, primary, direct control, subject of course to an appeal being available to the Ontario Municipal Board by any party, including the Ministry of Natural Resources, which might feel that the municipality is exceeding its legitimate and proper objectives.

I might also add that under the Planning Act, which would govern many of these types of applications because of the need for official plan and zoning bylaw amendments, the mechanism built into the Planning Act of 1983, where the province believes that a particular application impinges directly on a matter of provincial interest the minister can give notice to the municipal board of that fact. In those circumstances, the municipal board then does make a decision, but the decision is reviewable, if you like, by the provincial cabinet, ensuring that the provincial interest does have, in all circumstances, the final say.



I think that is important to keep in mind. What we are suggesting in terms of increased municipal responsibility is that it is always that final override either by the municipal board, which is in essence a provincial agency, or by the cabinet itself which ensures that provincial policy will be ultimately in control.

Also, any agency making decisions under the legislation must take into regard the provincial policy statement. We believe a combination of those mechanisms really does provide all the guarantees that the province needs to ensure that its legitimate provincial interests are going to be in place and ultimately be in a position to override any municipal initiatives which are considered to be out of line.

Our recommendations are designed to ensure that legitimate municipal interests are not lost in the shuffle, because we believe it is quite possible that could happen under the present legislation. There are three specific suggestions or recommendations, which I would like to review very briefly with you, that we think would be a substantial improvement to the bill.

First, I have entitled it "Operations Agreements." I suspect you have heard submissions of this type, both pro and con, in the past. I believe the aggregate producers, for example, are reluctant to have municipalities have a greater degree of control over such things as operations agreements. It is very common under the Planning Act, with subdivisions and other types of development, that the minister, in approving those kinds of developments, makes it a condition of approval that the applicant or the developer enter into an agreement with the municipality to take into consideration such things as servicing, road improvements, those types of things. Those agreements are always subject to final review by the Ontario Municipal Board in the event that the conditions are considered unreasonable.

We believe there is no reason, in principle, why aggregate operations should be exempted from this kind of normal condition which applies to virtually every other development in a municipality. What we are suggesting in this is that there should be a mechanism that allows a municipality to enter into an agreement with an operator of a pit to govern the types of things which are legitimately municipal interests, those types of things being the operations that can have immediate local impacts either adjacent to the site or adjacent to a haul route.

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It is the experience of the township of Erin that impacts along haul routes can be of substantial concern to local residents and to the local municipality. The impacts on the local road network, the nuisance types of impacts can be very substantial, and the most direct way and the most appropriate way, in our submission, of dealing with those is to allow the municipality explicit authority to enter into agreements with the operator as to how those haul routes should be upgraded and maintained over time and how the operations would proceed in relation to that particular pit.

It is our recommendation that this mechanism be given to the municipalities through the ability of the Minister of Natural Resources: Where he believes it is appropriate on application, he can impose on that licence, as a condition, that the operator enter into such an agreement with the municipality. It would therefore be ultimately in the minister's hands as to whether that condition was imposed and then, if it is imposed, it can be worked out at the local level, and if it is not worked out in a legitimate and

appropriate fashion, it can be appealed to the Ontario Municipal Board or to the cabinet.

It seems to me there are very much sufficient protections for the provincial interest, and it does accommodate the legitimate need for a local municipality to get a handle on these kinds of serious local impacts.

Presently, the Pits and Quarries Control Act is handicapping municipalities in the sense that they cannot do this; there is no explicit authority to do this. Many municipalities have struggled over the years to have these types of agreements with operators. I think that in itself tells you there is a very real need for these kinds of agreements. Almost every municipality has some kinds of agreements with pit operators and the legal status of those is very questionable at the present time.

It is a difficulty, both for municipalities and, frankly, for some operators, because some operators would benefit from that if they were able to go and say to local residents and to say to the municipal board and to other affected decision-makers and agencies, "We have an agreement with the municipality which will govern those kinds of impacts and control them, so you needn't be concerned about them." I think that would serve all the parties in the process very well. Our recommendation there is in the boldface type.

The second one is related to the third one in some respects. There are two circumstances in the new bill where new licences could be issued and conditions could be not carried forward that were in place on the old licence, or conditions could be subsequently changed or rescinded by the minister without the municipality necessarily having any remedy.

Certainly the municipality would get notice, but the municipality's role is then reduced to the same kind of role as any other commenting agency, in the sense that you can comment to the minister and say, "We really don't like the fact that you've removed that condition from the licence," but the minister can simply say: "Thank you for your comment. I'm going to go ahead and do what I intend anyway."

Obviously the minister has to have the final say in this kind of matter, but it seems to us appropriate that if the municipality feels strongly that a condition is being eliminated or not carried forward, something it feels is in place to protect its legitimate concerns, it should at least have the opportunity to ask the OMB to hear both sides of that story and make a recommendation to the minister about whether that condition should be carried forward or not.

The act is quite imbalanced as it is presently drafted, because it provides to the licensee, the operator, a right to appeal to the municipal board if he is not happy with what the minister intends to do with the condition, but it provides absolutely no right to either the municipality or the residents to have such an appeal. I am not here speaking for whether it is appropriate to have the residents have such a right of appeal, but it is my submission to you on behalf of the township of Erin that a municipality, exercising its responsible and legitimate function in the planning process, should be entitled to request the Ontario Municipal Board to hear that matter and determine whether it is prepared to make a recommendation to the minister that such a condition is appropriate. I do not believe that this is an unreasonable request, given the importance of these types of things and given the important role that municipalities have to play.



So there are two sister recommendations in 3.2 and 3.3 designed to accommodate both circumstances where the minister can issue a new licence without carrying forward an existing condition. Some of those existing conditions were put in place as a result of OMB hearings in the first place. The second one is a circumstance where the minister intends to change some kind of condition or eliminate a condition that is otherwise in place.

In conclusion, I would like to point out that the township of Erin previously made some preliminary comments on Bill 170 to the minister in December 1988. A copy is attached to our brief as appendix 1, with a covering letter from Mr. Clarke, the clerk and office administrator of the township. Basically, the position of the township is in support of the positions which have been previously advanced by the Association of Municipalities of Ontario and the Ontario Good Roads Association, subject to the exception noted. In that brief a list of questions was also posed to the minister in item 3 of that brief which is attached as appendix A.

Following the submission of that brief, those questions were responded to on behalf of the minister by the letter which is attached as appendix B to Mr. Clarke from Mr. Scott. Having considered the responses to those questions and having given the matter further thought, the township's final position is now as set out in this brief that we have just presented to you, to supplement the initial position that it put in December 1988.

Mr. Chairman: Before I recognize Mr. Wildman, Ms. Bryden and Mr. Pollock, I would like to make one clarification as chairman of the committee with respect to the availability of the amendments. I thought it might be appropriate because I should be apologizing to the two groups in front of us here, the first two this morning, that you did not get the amendments.

As you are probably aware, this particular bill was assigned to this committee during the last week of the session. It took us until about the beginning of the second week of March to actually decide on the format for our hearings, etc. At that time we decided we would be sending out the amendments to any group that had already communicated with a member or with the ministry.

There were nine umbrella groups province-wide, such as the Association of Ontario Municipalities, that had been working on a relatively continuous basis with the ministry, and there were three townships that had spoken to various members. My understanding was that the three townships would have received the amendments along with the nine umbrella groups. We are going to be hearing something in the order of 17 submissions.

The other decision I made arbitrarily as chairman was that we would accept submissions up until last Thursday, March 22. Most of those submissions were confirmed last week and it did not seem practical with our present postal service to mail out amendments at that late date. That included, apparently, one of the three townships that had originally contacted us. It did not really confirm it was coming until last Tuesday or Wednesday.

This is the reason for the lateness of the amendments being received by those who received them. If you did not receive them, I apologize because it must have been through the unclearness of my directions to the clerk of this committee, who is not, incidentally, the gentleman sitting beside me today.

Mr. Garrod: I would just like to say that we did, in fact, receive the amendments, courtesy of Dale Scott of the ministry, who kindly provided them to the township by letter of March 21. So we have had an opportunity at least to review them very briefly.

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Mr. Chairman: The clerk just clarified, because this was again in negotiation. I was under the impression until just this instant that these were going out through the clerk's office. Apparently this was done in co-operation with Mr. Scott. He was actually sending them out to those individuals who we knew were going to be appearing before the committee. So, if you did not receive them, I apologize for that.

I hope you understand that this is not the end of it. The other thing I would like to indicate to you is that we are having another week of deliberations later on in April. The House reconvenes on April 25. Certainly, this committee will be reporting to the House at some point, but there are a couple of months or so down the road that we have to comment further on these deliberations, so do not feel that today is the last input.

Mr. Wildman: I want to compliment you on a very thoughtful brief. I notice at the end, in the appendices, you have attached a letter from Mr. Scott. In this regard, you are talking about the variance of licence conditions that could occur if licences are renewed for operators who held licences under the Pits and Quarries Control Act.

I note in Mr. Scott's reply he says:

"There are, however, some licences that include conditions that are inappropriate and/or legally unenforceable, and these conditions should be changed upon issuance of a replacement licence under the Aggregate Resources Act. Conditions that refer to municipal development agreements may be of this type and it will therefore be necessary to carefully review the content of such development agreements and incorporate those components which are within MNR's mandate as specific conditions to the licence."

In essence, what Mr. Scott and the ministry are saying to you is that if they like the kind of conditions that you may have negotiated in agreements with operators within your municipal boundaries, they may, at their discretion, include them in their conditions, but if they do not like them, they will not be included, and my reading of his letter is that you have no recourse. Is that your understanding?

Mr. Garrod: I think it is certainly fair to say that the township would have no recourse in the sense that the minister issues the licence and ultimately determines what conditions go on that licence. There is at least one circumstance in the township of Erin, and I think there may be others, where an existing licence has as a condition that was imposed by the minister that the operator enter into an agreement with the municipality and that the agreement deal with such matters as road maintenance, upgrading and so on.

The township considers it very important that it have the ability to deal with those sorts of matters in an agreement. I read Mr. Scott's letter as saying that if the act is passed in the form that the bill presently is, there is no explicit authority for municipalities to enter into such agreements. They would therefore be uncertain about their legitimate status and they may not carry those forward.

What I am saying to this committee is, please give us that explicit authority in the legislation in order that when conditions are carried forward, they can be carried forward and it will be clear to all parties that there is the legal authority for municipalities to enter into such agreements



with pit operators for legitimate, specific purposes which are related to the local concerns and not provincial concerns.

Mr. Wildman: Thank you. I notice also, though, that under the current Pits and Quarries Control Act, and even under the proposed bill, there is recognition of municipal bylaws on the location of pits and quarries. However, under the new proposals, wayside pits and quarries, with which Erin has had some experience, can be established despite local zoning bylaws.

As you indicated in your presentation, that is a direct violation of the government's own mineral aggregate resources planning policy statement, which states that the plan may require a rezoning for a wayside pit or quarry in an area of existing development or particular environmental sensitivity. Is it your position that municipalities should be able under this new act to restrict the location of wayside pits with zoning bylaws?

Mr. Garrod: I am sorry, I did not quite follow the thrust of your analysis of the provincial policy. What are you saying?

Mr. Wildman: The provincial policy currently states that the plan may require a rezoning of a wayside pit or quarry in an area of existing development or particular environmental sensitivity.

Mr. Garrod: Yes. I think I have found the section you are referring to. I think it is section 2.5 of the policy. It says that it is the policy of the province that official plans permit wayside pits and quarries without requiring an amendment to the plan or zoning bylaw except that the plan may require rezoning for a wayside pit or quarry in areas of existing development or particular environmental sensitivity.

I guess the way I have always read that is that in most instances it is not necessary to get an official plan amendment or a zoning amendment for a wayside pit, but in certain special circumstances it may well be necessary. I believe the township is quite content with that position.

Mr. Wildman: Would you like that to remain under the current system, when the new bill comes into effect, if it comes into effect?

Mr. Garrod: I guess it is our position that the new bill should be consistent with this policy statement, which the township believes does adequately balance the circumstances. If you are telling me that you do not think the present bill is consistent with this, then I guess our position would be that it should be consistent with the provincial policy.

Mr. Wildman: That is my position, and I thought it was yours after listening to your brief.

Mr. Garrod: We had not actually addressed ourselves to wayside permits, because quite frankly it has not been something that has given the township of Erin any particular concern over the last number of years. There have been isolated examples, but on balance the system has been working quite well.

Mr. Wildman: There is an infamous case in Erin township of a wayside pit that received 24 renewals. Is that not correct?

Mr. Clarke: That particular pit is now pending an Ontario Municipal Board hearing on an official plan amendment and a rezoning to set it up properly and to license it under the act as a pit.

Mr. Wildman: That is the point. That is something that we are trying to control. We do not want to have the chaos that has occurred in the past with some wayside pit operations.

Mr. Clarke: That is a good example of a wayside pit that is no longer a wayside pit. It has become a commercial source, and it has been a difficult one to wrestle with. The municipality supported the amendments to set it up, and we are waiting now for a board hearing to license it and to set it up under the plan.

Mr. Chairman: I have to interject at this point, because we are already out of time, and I would like to give Mr. Johnson, the home member, a chance to wind up.

Mr. J. M. Johnson: One of the problems that Erin has experienced in the past is that an existing operator sold his operation to a new gravel extractor and the new individual was not fussy in adhering to the orders laid down by the OMB in the original agreement. The minister has been very supportive of the township's position and has tried to encourage the new operator to comply.

I wonder if that can be addressed when Bill 170 is drafted, with an appropriate section stating that if the operation is sold, the licence conditions would have to be carried forward to the next operator, the purchaser of that operation, so there would not be this unknown factor of whether it is legal to enforce it or if a new hearing is required.

If we could address it with an appropriate amendment or change so that there would be no confusion that, once a licence is issued, whatever conditions are attached to it would remain with that operation, regardless of the change of ownership, would that not solve one of the problems, Duncan?

Mr. Armstrong: I like that idea, Mr. Johnson.

1110

Mr. J. M. Johnson: Can that be handled in any of these amendments that your solicitor has prepared?

Mr. Garrod: It would appear to me that section 18 is the section that deals with transfers of licences and it does not explicitly say one way or the other whether or not additions would necessarily be carried forward. I think it falls more generally into the section that I was commenting on, section 20, I believe, which indicates that the minister can change the conditions on a licence at any time, whether or not it is being transferred.

What I am asking for on behalf of the township is that any time conditions are going to change, whether it is by a transfer or by a situation without a transfer, the municipality, if it considers that its legitimate objectives are being frustrated, should have the right to an OMB hearing to argue the matter out as to why that condition should be remaining on the licence and the board should then make a recommendation to the minister, depending on which way it sees the issue.

I think that your situation would complement the submission that I have been making.

Mr. J. M. Johnson: In your recommendation 3.2 you make a case that



the licensee, if he is not satisfied, can require a hearing by the OMB, but you feel the municipality should have the same right.

Mr. Garrod: I think that any time an appeal is provided for one party in a proceeding, it is only reasonable to provide an appeal to the other side of that issue. If you are going to have an appeal for the licensee, there is a presumption being made that there is a legitimate objective to be accomplished by such an appeal, and if that is so, then the municipality should be equally entitled to have that opportunity.

Mr. Wildman: So should the local residents.

Mr. Garrod: That may be as well.

Mr. J. M. Johnson: I am sure, since this was brought to the attention of the chairman, that he will see that it is properly drafted. He will certainly concur with the fairness of that.

Mr. Chairman: I will do what I can.

With that lighthearted comment, I will thank the group for coming. I would like particularly to thank the township of Erin and the township of Puslinch for being on top of this aggregate matter for a number of years and obviously, from your submission, keeping up to date and being current with all of the proposals.

It has been most helpful to me as the chairman. As both of you indicated, we are neighbours and I think I share a lot of your concerns with respect to the aggregate industry, so it has been a particularly meaningful hour for me personally. Thank you very much for coming.

Mr. Wildman: It is not hard to be on top of an issue like this when you live on top of it.

Mr. Chairman: That is right.

Mr. Ballinger: This Sault Ste. Marie humour is really more than flesh and blood can stand.

Mr. Chairman: Our next presenters are from the Ontario Good Roads Association. I would like to introduce Ken Boshcoff, the president of the Ontario Good Roads Association. If you would be good enough to introduce the rest of the folks at the table for the record, we would appreciate it.

#### ONTARIO GOOD ROADS ASSOCIATION

Mr. Boshcoff: As president, I would like to introduce Vik Silgailis, to my immediate right, the director of engineering for the municipality of Durham and an Ontario Good Roads Association director, and Gary Herrema, chairman of the regional municipality of Durham and a member of the OGRA. Also with us today is Sheila Richardson, our executive director, and Diana Summers, our policy adviser.

Mr. Ballinger: She's got a day job now.

Mr. Boshcoff: Absolutely, and doing a good job for us.

I would like to make some preliminary remarks and then Mr. Silgailis will make our presentation.

OGRA is a municipal association with 750 members, urban and rural, large and small. Municipal representatives who sit on our committees and the board of directors include both elected representatives and appointed municipal officials, so the interests of municipal road and bridge infrastructures are well represented.

We are pleased to be here this morning to represent our comments regarding Bill 170. Revised legislation dealing with mineral aggregates has long been a goal of municipalities. We will also respond to the amendments that have been proposed to Bill 170 by the Ministry of Natural Resources.

I will now ask Vik Silgailis to present the Ontario Good Roads Association's comments on Bill 170.

Mr. Silgailis: Generally, OGRA supports the revised legislation, particularly as it relates to increased ministry consultation with municipalities and more stringent requirements on progressive and final rehabilitation. We do, however, have some serious concerns about the proposed compensation to municipalities from pits and quarries on private lands, and we will comment on it towards the end of our presentation.

You have in front of you copies of our submission to the Ministry of Natural Resources on Bill 170. As you can see, OGRA concurs with the expanded list of definitions and the purposes of the act as they appear in Bill 170.

Section 3 lists various actions that the minister can undertake in the administration of the act. Parties with which the minister may consult have been added to this section, and OGRA recommends that municipalities be added. The ministry is recommending this amendment. We only received the amendments earlier and we really have not had too much opportunity to discuss this among ourselves.

OGRA concurs with the provisions dealing with the application for licences and requirements on the site plans that accompany all applications.

Section 10 in Bill 170 states that the minister must be satisfied that the location of the land described in the site plan complies with all relevant zoning bylaws. The amendment proposed by the ministry would seem to remove any onus to prove compliance with zoning bylaws from the applicant.

Section 13(5), as proposed by the ministry, states that the minister may issue a licence only if the site complies with all relevant zoning bylaws. OGRA feels that adherence to zoning bylaws is essential.

OGRA also supports section 11, which provides for municipal comment on all applications for licences within the municipality.

Section 12 states that the minister shall have regard for any comments provided by the municipality.

Section 14 provides for the regulations to deal with the disbursement of licence fees to municipalities. The ministry is proposing that the regulations also deal with the purposes for which such disbursements can be used. We will comment on this section later.

Section 17(1)(c) provides for municipal comments on each pit and quarry operation. OGRA recommended that comments be received not only from the municipality in which the site is located but any other municipality that



wishes to comment. This would allow municipalities that are impacted upon by a pit and quarry operation to provide input.

The ministry's proposed amendment to this section not only ignores OGRA's comment but adds a new clause that limits the municipalities' comments. The ministry's amendment implies that municipal comments may not be pertinent unless guidelines are applied.

Section 17(4) is similarly amended by the ministry, and we would reiterate our previous comment.

Section 20(4) deals with a ministerial decision to change a condition of a licence. The proposed bill states that the municipality may be advised of the change if the minister is of the opinion that the matter is of importance.

OGRA would prefer that the minister be required to advise municipalities of a change in the condition of a licence and that such amendment would be consistent with the increased consultation throughout Bill 170.

Section 23 deals with wayside permits. The ministry's amendments use the terms "temporary project" and "urgent project," and these terms do not seem to be defined. Bill 170 contains a section that states that the minister can determine such projects. This is deleted in the proposed amendments. OGRA feels that clarification is required regarding the process by which a project would be determined to be a temporary or urgent project. OGRA also considers it essential that bridge construction and maintenance projects be included.

Section 24(3) refers to the disbursement of permit fees and, again, the ministry is recommending that the regulations be amended to include the purposes for which these fees can be used by municipalities. Clarification is required on the proposed amendment.

Section 27 deals with the issuing of permits. The ministry is recommending that this be dealt with in the regulations. OGRA would appreciate clarification on this aspect.

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Section 27(2) states that no wayside permit shall be issued if the issuance will result in more than one wayside permit for one site at any time.

OGRA is concerned that where only one site is available, two projects requiring permits are often under way at the same time. If the ministry is concerned that the responsibility for rehabilitation may be confused if more than one permit for a site is issued at the same time, then OGRA recommends that the legislation be amended to provide that the second permit be issued with a provision that an agreement must be entered into between the municipalities outlining the responsibilities of each permit holder with respect to the rehabilitation of the site.

Sections 30(1) and (2) allow the minister to vary any conditions of a permit or rescind a permit at any time. After taking such action, the minister shall advise the permit holder and the clerk of the region or county and the local municipality in which the site is located. We feel that such unilateral action is unwarranted and not in keeping with the consultative process that is present in Bill 170.

Section 33 deals with rehabilitation and OGRA fully supports the

proposed legislation. We would recommend that municipal input be sought by the ministry determining a priority listing of pits to be rehabilitated.

The ministry has recommended that sections 46(5) and (6) be amended to refer to a "class of permittees to be exempted from payment." We would appreciate clarification on this amendment.

The ministry is also proposing an amendment to section 67 of Bill 170 that would add a section stating that the regulations may require and provide for the records and information that must be kept by municipalities to which fees are disbursed. OGRA would like to review the complete regulation dealing with remuneration and the purposes for which it must be used.

I would like at this point to spend a few minutes discussing the proposed remuneration and disbursement schedule as proposed for inclusion in the regulations. The OGRA membership is disappointed that the schedule remains unchanged from the ministry's original proposal of many years ago. The ministry's proposal, as we understand, is four cents a tonne to the lower-tier municipality, one cent a tonne to the province, half a cent a tonne to the region or county and half a cent a tonne to an abandoned pit and quarry fund.

The association believes that the proposed payment schedule is not sufficient to compensate municipalities for the costs they incur as a result of pit and quarry operations. The association further believes that any compensation received by municipalities under this act should be directed to municipal road and bridge budgets.

OGRA feels that the proposed schedule is not based on a study of the costs resulting from trucking of aggregates on road systems and that such a study should be undertaken by the Ministry of Transportation in consultation with the municipalities and the fee schedule amended accordingly.

The association feels that municipalities should be compensated for the actual costs incurred by a municipality as a result of a pit and quarry operation utilizing the municipal road and bridge system. The payments could be made into a special fund to be administered by the Ministry of Transportation and distributed as dictated by needs studies.

This would ensure that all municipalities incurring costs as a result of their road and bridge system being used by the aggregate industry could be compensated and not limited to those in which a site is located. The association stresses that the payment and receipt of these funds should not impact in any way on current MTO subsidy allocations to municipalities.

The association also recommends that the regulations be amended to require a review of the fee schedule on a regular basis.

I would like to raise one additional point regarding financial compensation to municipalities. The issue was raised in a resolution that was endorsed at OGRA's annual conference in February of this year. It deals with municipalities on the Great Lakes in which storage docks for gravel and stone products are located. The gravel is delivered by lake boats and then trucked to various points of delivery. Under the proposed remuneration and disbursement schedule, these municipalities are not eligible to receive compensation for damage due to roads as a result of trucking of aggregates.

We very much appreciate the opportunity to discuss this proposed legislation with you and hope that our comments will be useful in your deliberations.



Mr. Ballinger: I will be brief. The chairman of the regional municipality of Durham and myself have had many discussions and I always feel privileged that I had the opportunity to follow him in his capacity as mayor of Uxbridge.

Vik, I want to isolate in on page 4, please, your second and a half paragraph, where you state, "The association further believes that any compensation received by municipalities under this act should be directed to municipal roads and bridges budgets." Are you familiar with the position of the Association of Municipalities of Ontario?

Mr. Silgailis: It has been a while since I reviewed—

Mr. Ballinger: Not to put you on the spot, but as a reminder, AMO appeared before us yesterday and is adamantly opposed to any sort of direction. If local municipalities or regions are given the responsibility, they want to make sure there is no direction with it.

One of the problems we have here—and I know Gary and I have had great discussion—is the role of the ministry in trying to find that so-called middle ground between all the groups and factions. It has taken 15 years to get this legislation to the stage where we are now in committee. Those of us, especially in Uxbridge, Caledon and Milton and the aggregate-affected municipalities in Ontario, see this as an opportunity to have a reasonable piece of legislation that addresses many of the concerns.

Obviously, there are always certain things that fall through the cracks. As it relates to this specific section, the operative words in the amendment are "the minister may," not "the minister shall," and some people are concerned about the discretionary power. But I just want to reiterate that AMO is adamantly opposed to your position.

Mr. Silgailis: Maybe Gary would like to comment on that.

Mr. Herrema: I realize that AMO's position has changed since a certain reeve from Puslinch got on the committee that was reviewing the matter some time back prior to his election to the board. That was not their position, but I realize it is conversant with your opinion and maybe that is why you snuck it in.

I think that we, as a region, have some concern about that, that it is not dedicated to what it might be used for. We are only speaking from a region, and I will not deal with the lower levels; I will let them deal with community impact funds if that is how they want to discuss them. But we in regions feel they should be, especially if you get a regional municipality like Durham. We could put our maps up for them. You are well aware, but for anyone who is not, the majority of votes are in the south end and any money could be utilized for where there is high-pressure screaming on roads with the population.

We feel in counties and regions that it should be. As far as the lower, I do not wish to speak for them; but in our case, it should be identified. We can even put a map up to show you where our gravel roads are. Some 12 million go through our region. A lot of them are on joint roads. We had the good luck of having the mayor kidnapped away from us but still getting all their gravel coming down through and utilizing our roads that we are continually upgrading. They used our sand to build your dome. We really feel it is serious.

Mr. Ballinger: Look at all the money we would have if we had had a levy in place.

Mr. Herrema: Oh Jeez, yeah. We have been fighting this too long, Bill. Sorry, Mr. Chairman. No, we think it should be in regions especially, and counties, because we are afraid it might become a slush fund if it is not utilized properly because of voting procedures.

It is for a disruptive industry—we are all aware of that, those of us who live there—but it is a necessary industry at the same time. We certainly think in regions that it should be, and I have been convinced that it should go to roads. I had that position even when I was mayor of Uxbridge, that it should go to community impact funds perhaps.

There is community impact, because people tend to stay off the gravel truck roads, so there is an impact on another road; I can have that argument. But in regions' case, we are trying to upgrade our full-load roads to accommodate the industry. As we seem to be getting milder winters, there is a demand for this commodity all year round, and we are never going to achieve it with the recommended money we have here.

Our other fear is that there are six votes in the north end of our region and there are 26 votes in the south end. You may well imagine where that may go, and we do not have the good fortune of having a Highway 406 go through the middle of our municipality which takes the brunt of the traffic.

Mr. Chairman: Many of us who live in the north end of a region have a great deal of empathy for that statement.

Mr. Ballinger: It is the quality of the members, Mr. Chairman, in the north that counts.

Mr. Wildman: Just double both those statements for northern Ontario as compared to southern Ontario.

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Mr. Herrema: We just think it should be the roads in regions and counties, and let the locals deal with the impact in their own way. I do not want to comment on that, as the reeve of Puslinch made the amendment after I left the board.

Mr. Ballinger: No further questions. I do not want to take up Mr. Wildman's time.

Mr. Wildman: Thank you. Again, I appreciate the quality of the brief. I am concerned about the comments you make, specifically with regard to sections 10, 17, 27 and 30. You say OGRA would like some clarification on a number of these things. It appears to me that most of these sections, particularly the amendments, would have the effect of giving the municipality less say, in particular with regard to zoning and how zoning might be applied to control aggregate extraction, than is currently the case. Is that your concern?

Mr. Silgailis: When we reviewed the bill originally, we welcomed this consultative process and sort of endorsed it. In some of our comments, where we felt there was a little bit of weakness, we pointed that out. Some of the amendments that have just been introduced seem to be watering it down



somewhat more, and that does concern us. You must appreciate that we operate as a board and work with a committee and we have not had time to sit down. We just reacted to the face value as we got them.

Mr. Wildman: I appreciate that. For instance, on section 17, you say "The Ministry's proposed amendment to this section not only ignores OGRA's comment but adds a new clause that limits the municipalities' comments. The ministry's amendment implies that municipal comments may not be pertinent unless guidelines are applied."

My reading of that amendment is that municipalities' comments with respect to transportation of aggregate from the pit would not be relevant. It would seem to me that there should be a broader list of items for the municipalities to comment on in this amendment. How would you respond to that?

Mr. Silgailis: As I say, my recollection was fairly broad. It did not spell out what the municipality can comment on. In the latest amendment, it spells out specific items, so it kind of limits us.

Mr. Wildman: Okay; I will leave it at that. I think sections 27 and 30 have a similar impact, or at least appear to have, in the amendments, and that is of concern.

Mr. McLean: I know you are here giving us the perspective of the region also. The delegation that was here before you had some very specific amendments that it would like to see with regard to the local municipality. Do you agree with the amendments they were looking at with regard to giving the local municipality more jurisdiction?

Mr. Herrema: I have a concern about how far you give them. I fought one election strictly on the gravel issue, so I know a little about it. If you give too much without also talking to the secondary government, where are the trucks going to come out on?

Mr. Ballinger: First time I lost my vote, incidentally.

Mr. Herrema: Where are the trucks going to come out on at the time?

My other concern is that you may set municipality against municipality to become restrictive, to outlaw. You should define what it is you are going to allow them to legislate. Is it hours of operation? Is it through the week or days of operation? Truck routes?

We have no problem with identifying truck routes in consultation with another municipality, but I would be very concerned about how much authority you would give them. In the township of Uxbridge we had a regulatory bylaw that worked very well, but across the road they did not have one, so they were operating all night with crushers going. Now today, with the great safety factor we have, with that high-frequency beeper for people backing up, they are waking everybody up at five o'clock in the morning backing up.

Mr. McLean: I am not necessarily concerned about the hours of operation. I am concerned about getting the approval or agreements with the developers with regard to maintenance of roads and those types of things.

Mr. Herrema: I do not have a problem with those at all, but they should go to both municipalities. With our official plan amendments, I do not know whether it is legal or not, but we certainly put in those conditions

prior to their getting this official plan amendment. What kind of an exit must they have? Paved? How far in? Turning lanes, decelerating lanes? We have used it as our carrot to perhaps come to this agreement that we did not have any authority to.

We have no problem. I am somewhat concerned with one section amendment where somebody is suggesting going to the Divisional Court, which is something we are certainly not accustomed to doing. We are accustomed to always dealing with the Ontario Municipal Board. I continually hear it here, to see if the zoning order is relevant. It was a new one to us. It caught me off guard. I have not seen it, and my days involve 20 years in this business.

As far as giving the kind of authority you are saying, no, I would certainly think there might be an overriding factor so that you do not run into this, what happens across the road.

Mr. McLean: So you would have no problem then if that was included in this legislation.

Mr. Herrema: No sir, I would not, because it is workable. We find the industry will do it. But then, we now have one or two who do not abide by it. I think then they would all be forced to do so and it would probably make for better, harmonious relations in the municipality, with the residents as well as the municipality.

Mr. McLean: In other words, the legislation would have to be strengthened to include that in it.

Mr. Herrema: Yes, I think at both levels of government.

Mr. McLean: Fine. Thank you.

Mr. Ballinger: On behalf of the minister, I just want to clarify for Mr. Silgailis and the chairman the reason we arrived at the amendments at second reading. Of course, you know, with government, two things happen. You receive all the submissions in response to first reading of the bill and you do not do anything. Then you are accused at second reading of not paying any homage to any of the submissions.

So what we did—I, as parliamentary assistant, participated fully in the process of reviewing all the submissions, around-the-table discussion about what makes sense and what does not make sense, what we can plug in here and what we can take out there, to sort of arrive at second reading with a reasonable consensus. With the greatest respect, that is why those amendments are there.

There really are only 17 substantive ones. Most of them are just cross-referencing, as you have already identified in your brief. In this business, and you have been at the regional level long enough to know that you are darned if you do and you are darned if you don't. Just to clarify that on behalf of the minister, that is why we are at this stage with the amendments currently before us.

Mr. Herrema: Waiting for a long time. It is a good start.

Mr. Chairman: Thank you very much, gentlemen. I appreciate your comments.



Mr. Chairman: Our next presentation is by the Canadian Portland Cement Association. Peter Waisanen and Bill Townsend will be presenting for the Canadian Portland Cement Association.

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#### CANADIAN PORTLAND CEMENT ASSOCIATION

Mr. Waisanen: My name is Peter Waisanen and I am the Ontario regional manager for the Canadian Portland Cement Association. Bill Townsend is representing St. Lawrence Cement. He is the senior vice-president, Ontario division. I would like to thank you for allowing us to make our presentation to you today.

First, I would like to make some general comments on parts of Bill 170 and then describe the possible effects of the bill directly on the cement industry. My comments will for the most part be directed at the proposed tonnage levy on the output of all pits and quarries in Ontario, but in general we support the aggregate producers' position, except where the new tonnage levy is recommended.

The proposed fee per tonne of output, which in most part goes to the municipalities, has some general negative aspects. The first is that any additional price increase will have the effect of reducing the amount of work the municipalities can do with limited funds to repair their existing road systems. As we all know, the infrastructure has taken on renewed interest among taxpayers. This has come about due to the excellent road system people have become accustomed to. Over the past decade, the funds dedicated to that sector have been decreasing in real terms.

The fact that these funds that would go to the municipality are not dedicated to any use, but rather are added to the general revenues of that municipality, is also disturbing. The fact that the establishments, this being the pits and quarries, pay taxes and employ residents of the municipality are benefits unto themselves. If there are certain concerns that are to be dealt with by the use of such funds, then they should be listed. The municipalities should also be accountable for the expenditure of these funds.

The bill would give municipalities the opportunity to comment every four years. This is over and above the annual review process and is viewed as an opportunity for municipalities to request changes in site plans and licensing conditions from the Ministry of Natural Resources. We feel this additional review process is unjustified.

The cement industry in Ontario is considerably different from the aggregate industry in that it produces a product that is sold not only in Ontario but also internationally. Cement could be shipped into the municipality where the plant is situated, but the vast majority is shipped to other areas of Ontario or the United States or farther.

Just as an aside, all but one cement plant have quarries on site. The one that does not have a quarry on site ships all materials for the process of making cement by boat.

Canada is a net exporter of cement and in 1988 Canadian producers as a whole exported 25 per cent of their production. Any increase in costs could erode that market, making Ontario cement less attractive, and could possibly increase the amount of cement imported into Ontario. This would have a

negative effect on industry employment and on tax revenues from the industry.

As the Ontario Good Roads Association just stated, the use of transportation systems by aggregate haulers is one of the major concerns that this bill is attempting to look at.

The cement and concrete industry is also in competition with other producers within Ontario. The steel industry, for example, is in direct competition with concrete for structural applications. In some ways, steel and cement are similar. The most basic similarity is that steel and cement are finished products whose raw materials are excavated from the earth.

If this levy is attached to pits and quarries, not only will the concrete aggregate price be increased, but the cement price will also be affected adversely. This would act as a penalty to the cement and concrete industries and affect the competitive nature of these industries.

The cement and concrete industries are just beginning to penetrate a market in Ontario that has been dominated for many years by an imported product. Concrete pavements are becoming more prevalent across Ontario, led by the Ministry of Transportation which has decided to build the majority of its heavily travelled highways with concrete in the future.

In some of these instances, concrete is more expensive in first cost than asphalt, but due to its longer life and lower maintenance costs, it has been chosen based on a life-cycle cost analysis. Additional costs may put some or all of this market out of our reach. The industry feels this area holds the most promise for increased cement usage in Ontario.

The cement industry will also be required to fund a large amount of environmental testing in the future starting very soon, which will be part of Ontario's quest to quantify and reduce industrial pollution. The cost of these ventures can be seen for what they are. There is a reason for committing funds to these projects. The cement industry does not always agree with the Ministry of the Environment on these aspects, but there is, I think, a general belief that the environment is very important.

The new levy proposed in Bill 170 has no purpose, as we see it, but to provide additional revenue to the municipalities. We request that the cement industry be exempt from the additional levy that has been proposed, based on the following reasons:

1. The cement industry does not negatively impact the local municipality to the degree that warrants compensation.
2. The cement industry must compete internationally and in 1988 was quite successful and exported about one quarter of its production. Aggregate industries compete only against other local industries.
3. The cement industry must compete against the steel industry, which has no industry-specific tax of this kind.
4. The cement industry must compete against the asphalt industry to increase its market share, thereby replacing an imported product by a locally manufactured one.

Thanks very much for allowing us to comment.



Mr. Wildman: I just have one question. I do not know whether you were here when we had the representatives of the township of Puslinch appear.

Mr. Waisanen: No.

Mr. Wildman: They pointed out that the levies as proposed in the bill have not in any way kept anything like pace with inflation. I understand your arguments, but if a levy is in effect and is justified in the first place, how do you justify it not at least keeping pace with inflation?

Mr. Waisanen: I think the main feeling we have is that the levy is not justified at all because we do not impact on the municipalities in the ways that the Ontario Good Roads Association has brought forward. The roads and the bridges obviously are affected by haulage. We do not haul aggregate out of the quarries. What we do haul—and in some cases we do not haul the entire production by truck; some of it does go by boat—the finished cement normally will go to the closest highway system and be off to be delivered either around Ontario or to the United States. The local road network is really not affected by the cement industry.

Mr. Wildman: Okay, I understand that argument, but surely just the fact of a quarry itself affects the environment of the municipality.

Mr. Waisanen: You mean from dust; is that what you mean?

Mr. Wildman: Yes, dust, noise, the hole in the ground.

Mr. Waisanen: Yes, but I guess our contention is that it is good for the municipality. It employs people in the municipality, and the funds that are proposed to be collected in the new bill, again, have not been directed to any specific proposed uses either.

Mr. Townsend: In addition, if I might add, the cement industry has been part of Ontario for a long time. The cement plants that now exist have been here for several years, and the quarries in existence and operating as an integral part of those plants. There are several hundred millions of dollars of investment in cement plants. A quarry is just a part of that, the extractive process to supply the raw materials.

The process of making cement actually reduces the amount—you do not get a tonne of cement from a tonne of limestone extracted, you can get about 0.6 of a tonne. So even when we do ship part of it by water, part of it by rail and part by truck, we are shipping less product than what is being extracted from the ground.

Mr. Chairman: Could I ask a question along these lines? In the locations that the present quarries are located in conjunction with the cement companies, has there been any experience with respect to water problems or any of the other additional features other than roads that have been identified with respect to this levy? The levy is not just for roads. It is for the impact of a quarry on the community, really, and in some instances they are replacing wells, for example, because of the lowering of the water table and that kind of thing. One of the big arguments for the unconditional nature of the grant to the municipality is so that it has the discretion of using it for roads or other purposes that are brought about by the particular industry.

Mr. Townsend: I am not aware of any particular incident. Perhaps

Dale Scott could best answer that, if he has had any problems with cement-related quarries.

Mr. Chairman: Go ahead. You will have to come to a mike.

Mr. Scott: I had not come prepared to answer this. There are only, I guess, six cement plants in Ontario—you can correct me if I am wrong—and they are fairly localized. As a result of that, we have not witnessed any particular problems that I am aware of personally.

I agree with the relationship of cement to the raw product. It is a different commodity; there is no question about it. In terms of writing the act, we wrote it as a generic act and we did not segregate various commodities.

Mr. Wildman: Is a quarry subject to the Mining Act and the mining levies under the Mining Act?

Mr. Scott: It depends on what kind of a quarry. If it is a quarry taking out precious metals or base metals, it would be.

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Mr. Wildman: But not in this case?

Mr. Scott: Not in this case. It is exempt.

Mr. Wildman: Whereas an iron ore mine would be subject to the Mining Act?

Mr. Scott: It would be subject to the Mining Act, yes.

Mr. Wildman: In other words, something in relation to what you said about steel.

Mr. Scott: It also depends on a lot of different relationships as to how you are mining it. Underground mining is under the Mining Act, too.

Mr. Cordiano: When you say that the levy that is being charged will adversely affect your ability to export, how in particular will it do so?

Mr. Townsend: A levy of six cents a tonne on cement or on extracted rock for producing cement or extracted raw material would equate to approximately an increase of 10 cents a tonne in the cost of production of cement.

Mr. Cordiano: Give me some more in terms of what that will do in impacting on your export figures. You are exporting about 25 per cent of what you make now. What do you estimate will be the impact of that?

Mr. Townsend: We have not done any estimates on that.

Mr. Cordiano: What about in terms of price competition? Do you know roughly what that will do to your cost component?

Mr. Townsend: As a percentage increase?

Mr. Cordiano: Give it to me any way you can. I am just asking general questions here. How is that going to affect your marketplace



internationally? Will you be less cost competitive by a rough percentage?

Mr. Townsend: Say, 0.2 per cent, as a rough estimate.

Mr. Ballinger: By way of a supplementary, how does that translate into a tonne?

Mr. Townsend: Ten cents a tonne.

Mr. Ballinger: No, on the average, what is a tonne of cement worth?

Mr. Townsend: A tonne of cement into some export markets—as you go farther away, of course, you make it up in transportation—is \$60 or \$70 in some of the export markets that we ship to.

Mr. Ballinger: You believe six cents will have an impact?

Mr. Townsend: It is six cents that transposes into 10 cents. In the cement industry, we are very cost conscious. It is a low-cost industry where we have to produce high capital investment and we have to produce at low cost. We worry about nickels. We have lost orders on nickels.

Mr. Cordiano: I am not trying to nickel-and-dime you. I am just looking at what kind of an impact that will have. I know that any cost increase at this time in the United States market, which is what we are talking about here—

Mr. Townsend: At this time, the cement industry in eastern Canada is pretty well sold out and has been for two or three years. We do not anticipate that to continue in the future. Right now it means 10 cents a tonne to us. In the future, it could mean lost orders.

Mr. Waisanen: The environmental problems that we are facing now, with the Ministry of the Environment requiring this additional testing where some has been done already, are going to cost the industry many hundreds of thousands of dollars in the next year and after that, as well. We are looking at a major cost increase there and this just thrown on top is going to hurt our position.

Mr. McLean: Really what you are saying, then, is that cement block manufacturers and all those people who make all those things out of sand or gravel and all that should not be subject to the six cents or whatever. Is that really what you are saying?

Mr. Townsend: We are speaking on behalf of the cement industry. We feel that we are different from the aggregate industry and we are taking the material and producing a high-cost material out of it at site and we have high capital investments.

Mr. McLean: Are they not doing the same with cement blocks?

Mr. Townsend: Cement blocks use aggregates and cement to produce blocks.

Mr. McLean: And bricks?

Mr. Townsend: And bricks.

Mr. McLean: So there is a whole industry there. I do not know how you can define one from the other. What is coming out of that pit is what you are paying the dollars on.

Mr. Townsend: We do not ship an aggregate product out of the pit.

Mr. McLean: That is right. You buy from the pit, the same as I could buy from the pit or the same as anybody else could buy from the pit.

Mr. Townsend: Pardon me, I am only referring to the base product, cement, and not concrete blocks. I am referring to the powdered product that we produce at a cement plant. There are five producers in Ontario who produce the powdered product. I am referring to the manufacturers of that powdered cement product.

Mr. McLean: I see. Was there much adverse effect on your industry when the government put eight per cent sales tax on your cement, for every load of cement that went out about \$60 dollars? Was there an adverse effect on your industry at that time?

Mr. Townsend: I do not recall how that tax was applied. I think it was applied across several construction products and not just cement.

Mr. McLean: Asphalt, too?

Mr. Townsend: Yes. The products that we competed with went up proportionately. In Ontario, there is a fairly closed market for that type of product.

Mr. Faubert: In your presentation, it seems that if the proposed fee per tonne were applied directly to road use you would have less objection than if it were, as stated here, just going to a municipality without a specific end use. Is that your position?

Mr. Townsend: I think for aggregates we would favour that the six cents a tonne or four cents a tonne in the municipalities be dedicated. For cement manufacturing, we feel that we should be exempt from the licence fee.

Mr. Faubert: You are arguing on behalf of the aggregate industry, because it is an integral part of your end use in construction?

Mr. Townsend: It is part of our end use. Yes.

Mr. Faubert: Especially in structural?

Mr. Townsend: Yes.

Mr. Chairman: Thank you very much, gentlemen. We appreciate your coming. This is a new twist compared to the other presentations we have heard. It was very enjoyable. We are going to adjourn in a moment until two o'clock this afternoon for our further presentations.

I have requested Mr. Pollock, Mr. Wildman and Mr. Fleet to stay behind for a minute or two. We have a little bit of a committee meeting to conduct. We will now adjourn until two o'clock this afternoon.

The committee recessed at 11:58 a.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

WEDNESDAY, MARCH 29, 1989

Afternoon Sitting





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McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Canadian Environmental Law Association:

Vigod, Toby, Counsel

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

From the Aggregate Producers' Association of Ontario:

Cook, Robert, Executive Director

Kellock, Burton, Legal and Planning Adviser

From the Canadian Land Reclamation Association, Ontario Chapter:

Hilditch, Tom W., President

From the Mulmur-Mono Coalition:

Hope, Brian

Hope, Joan

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, March 29, 1989

The committee resumed at 2:07 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: The chair recognizes a quorum. We welcome Toby Vigod, the director of the Canadian Environmental Law Association, to our deliberations. She is scheduled to begin a presentation at two o'clock. I have asked her to bear with us while we look after two housekeeping details.

The representatives from each of the three parties met after this morning's session. The reason is that we received a number of phone calls this morning concerning people who wanted to make presentations to the committee. In discussion with these groups of people over the lunch hour, it turned out they are part of an umbrella group that is, I believe, called the Envirowatch Coalition.

Because they are part of that umbrella group, I requested that instead of having a number of presentations tomorrow they all come together at 1:30, and they conceded they would do that. Because we are moving away from the designated schedule for a meeting of the committee, I would like somebody from the committee to move that we receive one final presentation and that it be scheduled for Thursday, March 30, 1989, at 1:30 p.m.

Mr. Wildman: I move that we hear this umbrella group at 1:30 p.m. tomorrow.

Mr. Ballinger: In the interest of harmony, I will second that.

Mr. Chairman: Mr. Wildman moves and Mr. Ballinger seconds it.

Motion agreed to.

Mr. Chairman: The second thing I would like to do is to ask a member of the committee to further underline a point we made at our opening session on Tuesday morning, and that is that our second week of deliberations would be clause-by-clause deliberations. To that end, I would like someone on the committee to move that the four days of April 17, 18, 19 and 20 be set aside for clause-by-clause consideration of Bill 170.

Mr. Sola: I will.

Mr. Chairman: Do I have a seconder?

Mr. Pollock: I will second it.

Motion agreed to.



Mr. Chairman: While we are interrupting, are there any further housekeeping tasks like this that we could finalize at this point, anything that has come to the mind of anybody on the committee?

Thank you very much for your patience, Ms. Vigod. As I indicated when we chatted earlier, we will start from now. You can use any or all of your 30 minutes to present. If you do not use all 30 minutes, I am sure some of the committee will have some questions.

#### CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Ms. Vigod: Thank you very much, Mr. Chairman and members, for having us here. We have distributed a brief. I do not intend to read it copiously, but I will be summarizing the main points.

First of all, the Canadian Environmental Law Association has since 1970, when it was formed, been involved in various pits and quarries issues through its case work, summary advice and law reform efforts. In 1979, the Centre for Resource Studies at Queen's University published a paper written by two of my former colleagues on the proposed Aggregates Act. As well, we presented extensive submissions before the standing committee on resources development back in 1979, and together with the Foundation for Aggregate Studies, submitted a proposed draft bill at that time.

It is fair to say that the Pits and Quarries Control Act is in need of overhaul and that many deficiencies have been noted over the years. It is our submission that Bill 170, while an improvement over existing legislation, contains a serious number of deficiencies that should be remedied before the legislation is passed. I think, as Ontario's experience over the last 20 years demonstrates, it is very difficult to significantly amend legislation once it is put in place. I think that this is an opportune time for amending the bill and that it should be both forward-looking and address deficiencies in existing legislation.

I think it is fair to say that while a reliable source of aggregate is necessary to the provincial economy, any new legislation must ensure that resource extraction is carried out in ways that minimize or prevent adverse social and environmental impacts. As I said, we will be recommending significant amendments to Bill 170.

I also think it is important to examine this bill in the context of the commitment of Ontario to the principles enunciated in the Brundtland commission report, and this is basically the goal of sustainable development. I have included a definition of the Brundtland commission on sustainable development, which is really the use of environmental resources in a manner that meets the needs of the present generation without compromising the ability of future generations to meet their needs. Behind this statement is the principle, really, of integrating economic and environmental decision-making.

It is submitted that the commitment of the government to this integration can be measured by examining both new legislation and policy as they are brought forward. It seems to us that the Aggregate Resources Act should be one of the first pieces of legislation measured by this benchmark.

I will now proceed to go through some of our detailed comments on Bill 170. We have outlined a number of the environmental implications of aggregate extraction activities. These were problems we detailed back in 1980 and I do

not need to go through them. I think it is clear that resource extraction can have a major impact on the environment and the act should ensure that these impacts are minimized.

First of all, it is our submission that the purpose section should be amended to provide further protection for the environment and ensure that adverse impacts of aggregate operations are minimized. The purpose section is an improvement over existing legislation, but as we have noted, clause 2(d) is rather weak in that it only talks about minimizing adverse impacts. We think it should have a more positive statement, that the act should provide for the protection of the environment and then ensure that adverse impacts are minimized.

The term "environment" is found, of course, in the purpose section and is referred to many times thereafter in the remainder of the legislation. The definition is therefore important and in our submission should not be unduly restrictive.

As we have seen, there is a proposed amendment to the definition of "environment" that broadens it slightly. We would submit that both these definitions are too restrictive and do not reflect present-day thinking on the comprehensive and interactive aspects of the environment. Specifically, the reference to adjacent lands does not take into account that adverse environmental effects may extend well beyond the boundaries of adjacent lands to quarrying activities.

We would recommend, as I believe a number of other groups have done, that the more comprehensive definition of "environment," as found in the Environmental Assessment Act, be used. We believe this would lead to consistency of definitions in Ontario's legislation, using the most comprehensive definition as a model. It just makes sense in the 1990s to go with a comprehensive definition.

The second point is the application of the act. As you are well aware, the proposed act applies only to designated areas of Ontario. Again, while the government has announced there will be a three-year program to evaluate a phase-in program, it is our recommendation that the act be amended now to apply to all of Ontario. Our reasons for making this recommendation are, first of all, that obviously aggregate operations have environmental impacts wherever they are located and there should not be pollution havens created where requirements for site plans, rehabilitation and security are less onerous.

Even back in 1980, at the standing committee hearings, the aggregate industry argued that the failure to apply the existing legislation to the whole province had been unfair to those in designated areas in comparison to those in undesignated areas who were not required to meet the provisions of the act.

Again, the Ontario Mineral Aggregate Working Party also said that the licensing of pits and quarries, of course, was the most effective means of controlling the operation and rehabilitation of any aggregate extractive site. We would agree with that proposition. There is no reason in our estimation for the protections as given under the legislation not to apply to the entire province.

Thirdly, site plan requirements and considerations for the issuance of licences: Presently, the proposed bill sets out a rather complex regime



involving the issuance of either class A or class B licences, wayside permits and aggregate permits to people operating pits and quarries on crown land and land under water. Of course, under each of these categories, there are different requirements for site plans. We recommend that the requirements be the same for all categories in licences and permits.

In fact, this proposed system is rather confusing and the requirements seem to be a bit arbitrary. Actually, in the legislation there is not that much difference, but there is no rationale why one item is included in one part and not in another. Again, there is no rationale for differing requirements for permits on crown land and licences on noncrown land. The potential for adverse environmental impacts is the same and it is our submission that site plan requirements should also be the same.

Also, the bill does allow for the minister to require additional information and this should provide the type of flexibility needed for additional information. As well, the proposed bill sets out matters to be considered by the minister in deciding whether a licence or permit should be granted. There are various sections dealing with the requirements for licences, wayside pits and aggregate permits.

It would be our submission that a consistent, uniform approach is to be preferred and that, really, a combination of the items found in sections 12 and 26 would be a starting point for matters the minister should consider before issuing any permit or licence.

We would also urge the inclusion of several items found in the existing legislation. They would include the preservation of the character of the environment, the availability of natural environment for the enjoyment of the public and the need, if any, for restricting excessively large total pit or quarry output in the locality. These continue to be valid considerations and should be retained in the new legislation.

Fourthly, the issue of public notification: Presently, only section 11 of the bill requires full public notification when an application is made for a new licence. Where there are amendments, the municipal governments may be informed, but there is no requirement for public notice. Of course, there are no public notification requirements for applications for wayside pits or aggregate permits.

#### 1420

Notification to municipal governments is required only after the permit is issued. We submit again that there is no rationale for these different notification requirements. We think issues of fairness and the issue of informed decision-making lead one to the conclusion that these public notification requirements should apply equally to amendments of licences, granting of licences, permits and proposed amendments to permits.

Fifth, the issue of appeals and hearings: Under the proposed bill, section 11 provides that any person may file a notice of objection to the issuance of a licence applied for. The minister is then required to refer the application to the Ontario Municipal Board unless the objection is not substantive or is frivolous or vexatious. Again, there are no hearing provisions in the case of wayside permits. Under section 44, only the applicant or aggregate permittee may request a hearing from the mining and lands commissioner.

We recommend that the opportunity to file a notice of objection with reasons and to request a referral by the minister to the board be provided to municipal governments and members of the public for all new licences and permits and all significant changes and renewals of these licences.

Again, the same test as outlined in section 11 should apply to guide the minister as to whether requests for referrals should be allowed. In other words, they would still have to be substantive and not frivolous or vexatious but would provide the guide for the minister in that regard.

As well, we recommend that the act be amended to provide that all hearings be held before the joint board. This would enable a member of the Environmental Assessment Board, whose main focus is environment concerns, to sit with a member of the Ontario Municipal Board to hear these appeals.

In order to accommodate this, we recommend that the definition of "board" be amended to read "the joint board as defined under the Consolidated Hearings Act."

Finally, we recommend that the hearing decision be a final and binding decision, with a right of the parties to appeal to either the minister or cabinet. Presently, Bill 70 provides that the board is only a recommendatory board and that after considering the board's report, the minister may take such action as he considers appropriate. It is our submission this leaves too much discretion to the minister and it would be fairer if the board were vested with decision-making authority in the first instance, with subsequent appeals to the minister or cabinet.

Recently, in fact, the Environmental Protection Act was amended to give the Environmental Assessment Board decision-making authority, where previously it had only power to make recommendations. I think this is a trend in, again, structuring boards and appeal processes in this manner.

On the issue of environmental reporting requirements and environmental assessment, only section 9 of the proposed bill requires the filing of a report by somebody applying for a class A licence. First of all, we recommend that the reporting requirements apply equally to class B applicants, as well as those persons applying for aggregate permits. We also recommend an expansion of the reporting requirements to include items such as the need for the proposed site, persons it is likely to harm, persons it is likely to benefit and the period of time over which the impact is likely to occur, a description of the environment, a description of the ultimate use of the site and a consideration of measures to mitigate the above impacts.

There has been a lot of discussion in the past decade as to whether the Environmental Assessment Act should apply to aggregate extraction. In 1976, the Ontario Mineral Aggregate Working Party dealt with this issue. It suggested that under a new act, an application for a new licence would be accompanied by a statement of the environmental impact of proposed pits or quarries. It stated that the environmental impact statement would result from consideration of all the alternatives concerning the environment. It noted at that time the Ministry of the Environment would be asked to work closely with the Ministry of Natural Resources in drawing up guidelines.

It was for those reasons that they recommended pits and quarries be exempted from the provisions of the Environmental Assessment Act. As they stated, the new act would contain equal environmental requirements to be applied to pits and quarries. Of course, the Ontario Liberal Party in the past



has advocated that all pits and quarries be subject to an environmental impact assessment.

The Canadian Environmental Law Association, in its 1980 brief on Bill 127, took into account the comments of the working party and recommended amendments to the bill to incorporate requirements for environmental assessment.

It is our submission that the proposed Bill 170 does not reflect the aim of the working party recommendations. We recommend that, at a minimum, the suggested amendments that we have just discussed be added to section 9 and to a new section in part V dealing with the requirements for applications for aggregate permits; in other words, basically have consideration of these environmental requirements put in the legislation and have that apply to both licences and permit applications.

Turning now to a discussion of wayside permits, again, there have been many documented instances where wayside pits have managed to remain open for long periods of time, becoming, in effect, de facto permanent pits. I think we all agree there is a greater need for control over the granting of wayside permits than is presently provided for.

We recommend the use of permits be limited for special projects only, that they not be renewable for four years following the expiration of the last permit and that no wayside permit should be granted to a person who has applied for a licence or permit at the same location.

Again, section 27 presently provides that the minister may issue a wayside permit whether or not the location of the site complies with all relevant zoning bylaws. This section would appear to violate the mineral aggregate resources policy statement, which allows municipalities to protect sensitive areas. That is section 2.5 of that policy.

Further, section 66 of proposed Bill 170 states that the Aggregate Resources Act will prevail over any municipal bylaws, official plans or development agreements that treat the same subject matter in different ways. I think this section is a far-reaching section. It would remove the power that municipalities currently have to put in place stricter controls. We recommend that this section be amended to allow municipal regulation of aggregate extraction except where there is a conflict with the new Aggregate Resources Act. I believe this is the usual language when you are putting together two pieces of legislation.

Rehabilitation of lands under water: Again, section 47 provides that the rehabilitation requirements do not apply to pits and quarries covered by water that is not the result of excavation of aggregate below water table. We have not seen the rationale for this exemption and believe that there certainly can be environmental impacts of aggregate extraction in these circumstances. Hatcheries can be affected, and we recommend that this section be deleted.

Finally, on the issue of intervenor funding, it is submitted that the rationale for intervenor funding has been well documented in this province, and indeed in the country, for a number of years. The many statutory opportunities for public input into environmental decision-making would be rendered meaningless unless adequate funds are provided.

We therefore recommend that either the proposed act provide for intervenor funding to people who meet set criteria, which could be established

in the act or regulations or, in the alternative, that a board hearing matters under this act should be designated as a board under the recently passed Intervenor Funding Project Act. The granting of intervenor funding would ensure that the board has the benefit of all the evidence relevant to the granting of a licence.

Finally, in our brief we note the conclusion of the Ontario Mineral Aggregate Working Party was that legislation to control extraction of mineral aggregate must ensure two things: first, really, the issue of the protection of the environment and second, that there would be adequate supplies of aggregate resources.

In coming to these conclusions, the working party noted that there was one basic reason for the 1971 act not accomplishing its intended purpose, and that was that it had its essential priorities reversed. It has certainly been 13 years since the report of the working party was released, and acceptance by the government of the basic principles of this report is overdue.

As I have said, while Bill 170 is an improvement over existing legislation, there are a number of serious deficiencies that should be remedied before the bill is passed. While I know the government is committed more to recycling, I think this recycling of Bill 127 is not appropriate and we should go further than that.

We have outlined on pages 14 to 15 the recommendations, as discussed throughout our brief. I would be happy to answer any questions.

1430

Mr. Chairman: Thank you very much.

Mr. Wildman: Thank you very much for a clear brief. I would like to draw your attention to page 11 of your brief, where you point out, as you have indicated earlier in your brief, this has been a long-ongoing process. I was a member of the resources development committee that looked at the last bill under the previous regime.

Mr. Ballinger: I did not think you were that old, Bud.

Mr. Wildman: Well, it contributed to the grey in my hair.

You state, and I recall well, "The Ontario Liberal Party...has advocated that all pits and quarries be subject to an environmental impact assessment and that the provisions of the EAA should apply" to pits and quarries.

During the debate on second reading I raised this matter, not specifically as you have done, and speculated that it would obviously not have been the civil servants who would have suggested that we should not follow the precepts of the Liberal Party in the past, so it must have been a decision of the political people, such as the minister, that changed the political party's position. Have you any indication as to what circumstances have changed that would lead the government party to change its position now that it is in power?

Ms. Vigod: I was going to say, "now that it is in power." I do not have any inside information.

Mr. Ballinger: Do I detect that as a direct hit?



Mr. Ruprecht: I think Mr. Wildman has some idea.

Mr. Wildman: Well, okay. I just would like to raise it—

Ms. Vigod: I do not have any further inside information.

Mr. Wildman: Yes, okay. On the matter you raised regarding definitions on page 4, we had discussions, and I appreciated the minister and his staff taking the time to meet with us over the last number of months. At that time, we suggested that the definition of "environment," for instance, should be the same as in the Environmental Assessment Act.

The legal staff of the ministry raised some problems with that, which I will not go into here, but it was suggested then by them that perhaps the definition in the Environmental Protection Act would be stronger than what was in the bill and would go some way to meeting our concerns. While we would have preferred the Environmental Assessment Act, we were prepared to accept the EPA.

That did not happen with the amendments. Can I ask you when CELA received the amendments from the ministry?

Ms. Vigod: I guess I actually got two sets, one from the ministry fairly recently.

Mr. Wildman: Have you had time to analyse them?

Ms. Vigod: Yes, I have had a chance to look at the amendment and I do not think that meets the concerns. Certainly it does not go as far even as the EPA amendment and still has the reference to adjacent lands, and I think that is certainly a limiting factor.

Mr. Wildman: Whereas in the EPA, it talks about lands, air and water in Ontario as opposed to site and adjacent lands.

Ms. Vigod: That is right. Just looking at the amendment, here it is talking about "the use, condition and natural features of the site and adjacent lands," which I would certainly submit is almost as limiting as the definition in the bill itself.

I said earlier that I still would think that going for the most comprehensive definition, certainly in leading up to the 1990s, is the way to go. We have moved beyond the EPA definition to the Environmental Assessment Act definition. I know certainly at the federal level, in discussions on the Environmental Protection Act, again, that definition was finally broadened and it is fairly encompassing. Certainly given the commitment to environmental protection, I think we should be looking at a broad definition.

Mr. Wildman: Finally, it seems from your brief that what you are essentially saying is that where there is not any clear rationale for different approaches, it makes sense in terms of fairness and simplicity for the same approach to be used, rather than having exemptions or different regulations for different things, unless there is a specific rationale. Is that a fair assessment of your—

Ms. Vigod: Yes. Actually, I think there should be, obviously, baseline requirements that should apply. I think issues of fairness, consistency—certainly I would think in some ways it is often the area where industries and ourselves agree that it is easier to understand and we have a

baseline to move from. As I said, the minister does have the power to impose additional conditions, so there is flexibility there, but we cannot see any reason for differentiating, and certainly the environment does not differentiate between some of these impacts.

Mr. Wildman: I was just going to say that a pit in northern Ontario in an unorganized area does not have any less environmental impact than a pit in a municipally organized community in southern Ontario.

Ms. Vigod: Absolutely.

Mr. Wildman: One would wonder why there is a difference.

Ms. Vigod: I think the crux of it is that there does not seem to be an environmental logic for differentiating between the requirements. Obviously, the impact can vary from pit to pit. It is not going to vary between, as you said, municipal, crown land or whatever.

Mr. Fleet: I have two kinds of questions, one of which was touched on a moment ago about the definition of "environment." Can you give me some examples of situations that would not be covered under the Environmental Protection Act definition that would be caught under the Environmental Assessment Act definition? We have two definitions and I want to understand some circumstances where the definition makes a difference.

Ms. Vigod: I think I did bring that with my Environmental Assessment Act. In fact, there is a definition in the—

Mr. Wildman: Keep in mind that the Environmental Protection Act definition is not in this bill either.

Mr. Fleet: I did not say it was, Mr. Wildman. I am appreciative of the fact that there is some difference between the proposed amendment and the EPA.

Ms. Vigod: Really, the chief difference is that the Environmental Assessment Act definition includes social, economic and cultural conditions and goes beyond just the natural environment per se. In other words, social impact is included in the definition of "environment" under the Environmental Assessment Act and in fact that is a matter that proponents have to look at when they are putting forward an environmental assessment. Those are the key differences between the Environmental Protection Act and the Environmental Assessment Act definition.

Mr. Fleet: I understand the use of the words "social impact" and that, but what does it really mean? If somebody is bringing forward evidence, if you have a Environmental Protection Act definition, what extra evidence do you get to bring forward? What is it that a board will consider that is in fact different?

Ms. Vigod: It is taking on more than just a natural environment. It includes impacts on individuals and people, communities, so it is the one—

Mr. Fleet: Would they not be doing that anyway under the EPA definition?

Ms. Vigod: The problem is that because the definition is more limiting, certainly boards can cut you off at some point and say, "Well, we're



not going to—" Traditionally, under the EPA, even though somebody might bring forth evidence of alternatives, they will say that does not apply.

In this case, because it specifically does not talk about social, economic and cultural conditions and in fact because in law you have two definitions, certainly somebody could argue that it is—and it is—a narrower definition and it is a limiting factor.

I just cannot see any reason why not to start with a broad definition. In most cases, it may be true that the effects may be on the natural environment, but certainly there can be effects on the community and that should be a matter that is included. As I say, it is a 1990's version of what we understand the environment to mean.

Mr. Fleet: That sort of leads to my second question, and that involves the scope of factors that would be taken into account and, really, the structure of licensing. There is a scheme of flexibility built into this bill, even with all the amendments. The scheme is still to have, for instance, class A and class B licences.

We have certainly had evidence that strongly indicates that there is a wide variety of cases under which pits get developed and the economic circumstances that relate to different kinds of projects and different economic considerations.

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What surprised me somewhat in the submission that you made—I thought it was a very good submission—was that it did not seem to pick up the economic reality that some of the reporting conditions and the detailed site plans and whatnot would, for economic purposes, simply eliminate the use of small operations because the cost of going through a hearing process would far outweigh the amount of money involved in using a relatively small pit.

I am wondering why you would not have addressed that economic reality and said, "Well, if we are going to deal with that in a flexible manner, we are going to have to deal with it realistically and look at the costs," because I did not see any reference to the financial costs involved in having a nice, clean, sweeping, single set of rules that may not really be very workable in some cases.

Ms. Vigod: I think, first of all, on the issue of site plan requirements, if you are just looking at section 8, subsection 8(1) and subsection 8(6), there is not a lot of difference there. I think that is an easy one to deal with. I just sort of mentally checked off what were the same requirements, and I do not think it could really be argued that there is much difference or that one is much more onerous or less onerous than the other. Certainly, just in terms of consistency in that regard, I cannot see any rationale for differentiation there.

As well, the class A and class B licences are distinguished by, obviously, the amount of aggregate to be extracted, and as far as the environmental impact is concerned, it is hard to see, again, where the fact that it is above by a few thousand or below by a few thousand is going to make a difference as to potential impact. It just seems, if you like, a distinction without much of a difference.

Mr. Fleet: Do you accept that the bill ought to be aimed at

accommodating that great difference in economic reality between the small operations and the really large outfits?

Ms. Vigod: As I say, there is some flexibility in the sections to require additional information, so one would expect that in the very major operations in fact there could be more required, whereas in the smaller operations, obviously the bare minimum would be all that would be necessary.

Certainly, the concern of rehabilitation has been a real one for no matter what size of pits. We are trying to address those issues. I think the requirements, as listed here, are pretty straightforward. I have not seen any indication of what the difference between subsection 8(1) and subsection 8(6) would be in terms of actual dollars, but I would not think it would be that much of a difference.

Mr. Pollock: I can appreciate your concern for the environment, but in licensing some of these pits, I understand that it could cost up to \$1 million. That would rule out a lot of the small producers and leave it pretty well wide open to the multinationals. Is that your intent?

Ms. Vigod: No, obviously not. I do not know where the \$1-million figure came from. It is a bit of a scare tactic, from my point of view. First of all, there are not, of course, mandatory requirements in all cases. Again, there is discretion for hearings. I would say the chances of a smaller pit going to a hearing are less than a major project in a large area. I think there is flexibility there.

Certainly with planning matters, it is the same thing. It is discretionary. Sometimes it is going to go to a hearing, and sometimes not. I think there should be opportunities, though, to require hearings. Again, the distinction between licensing and permits does not seem to me to be a major one.

Mr. Pollock: Do you know the time frame it takes to get a class A or a class B licence from the time you first apply until actually getting that through? Have you any idea of the time frame?

Ms. Vigod: I have not seen any recent statistics but, again, certainly part of the problem is it is hard to get access right now to information on licensing.

Mr. Wildman: Mr. Chairman, perhaps Mr. Scott can tell us.

Mr. Chairman: Can you answer that question? What is the length of time for a permit to be granted? I see somebody putting up "five" back there. I do not know whether it is five decades, five years or five months.

Mr. Scott: It is variable. On a small, rural type of application, less than 20,000 tonnes, as we are proposing in the new legislation, if you are in a remote area, not near any builtup urbanization such as a city the size of Kitchener, Waterloo or whatever, if you are away from that, you could do it in six months. If you are in an urbanized area and if you are applying for a large operation, it could be many years. A minimum would probably be a year to two years, and five years is not uncommon.

Mr. Chairman: I think with that answer we will have to cut it off. We are a few minutes over time already.



Mr. McLean: For clarification—I do not know whether the ministry could do it or perhaps the parliamentary assistant may be able to do it—I am curious to know why you are not now requiring environmental assessment to be part of this legislation. The parliamentary assistant would probably have the answer to that.

Mr. Ballinger: Are you asking a question of me or are you asking a question of the deputant?

Mr. McLean: I think it is probably to whoever is carrying this bill, and I presume it is you. The bill is changed and I am just wondering if there was some reason why the environmental assessment is not in it any more.

Mr. Ballinger: I will certainly have the debate with Mr. McLean after, but I do not think this is the place.

Mr. Chairman: Thank you very much. We appreciate your coming. Sorry you got caught in the cross-fire there in the last 30 seconds. That happens sometimes.

Our next delegation is the Aggregate Producers' Association of Ontario. Robert Cook, the executive director, will be addressing us. I request that you introduce the other two gentlemen and give their titles as well for the record.

#### AGGREGATE PRODUCERS' ASSOCIATION OF ONTARIO

Mr. Cook: I am Robert Cook, executive director of the Aggregate Producers' Association of Ontario. On my far right is Burton Kellock, a solicitor and our legal and planning adviser. On my immediate right is Stan Steip, the association president. I would like to turn it over to Mr. Kellock, who will be making our presentation for us.

Mr. Chairman: Great. Have a chair and rest easy.

Mr. Kellock: I believe we have handed out some material which I do not propose to refer to. I would be obliged if the members of the committee did not bother with it at this point in time, because I would like to engage in some dialogue with the committee on what I think are important principles rather than the nitty-gritty which is covered in the text.

On behalf of the aggregate producers' association, I would like to speak to the committee about the approach to regulation that should be taken. In other words, the purpose of Bill 170, what you are really trying to accomplish, standing back from the detail.

I assume that the purpose of the bill is not to prohibit mineral aggregate mining in Ontario. I presume therefore it is to permit it, subject to addressing legitimate environmental concerns. I have been in many pit and quarry cases since I started to practise, which is almost 30 years. I do not know of any serious environmental problems that either have been discussed in those cases or have resulted from the actual establishment of a pit or quarry. We are not talking about a toxic waste disposal site.

The Ontario Municipal Board has been handling environmental issues quite competently for that period of time, long before the Environmental Protection Act and the Environmental Assessment Act were a gleam in the legislators' eyes. The question is, should we complicate the process and put the pits and quarries through the environmental assessment process? It is already being

done by the municipal board. If you make the act apply expressly, all you do is complicate and lengthen the process and increase the expense.

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The key, I would suggest to members of the committee, is the mineral aggregate resource planning policy that was put in place under the previous government and continued under this government. That, I think, should be the hallmark of the new legislation. The key principles referred to in that policy are obvious. Mineral aggregates are nonrenewable and location-specific. In other words, they occur where they occur and nowhere else. Second, it is in the interest of the province to provide to consumers in this province a supply of mineral aggregates at a reasonable cost. The conflicting approaches to this bill and to the amendments can all be resolved, in my respectful submission, if you just look at MARPP, decide that it makes sense and resolve those conflicts in the light of it.

Let me spend just a minute talking about the history of the aggregate industry and the trends that I see. Getting planning permission and licences for a commercial operation—I do not mean 20,000 tonnes. I am not interested in that; the association really is not interested in that; it is insignificant. The planning permission process is becoming more and more lengthy. If you could guarantee me five years for a major case, I think most of my clients would be delighted.

Length equals cost. The requirement to cover off every possible discipline, from limnologists who talk about fish to hydrogeology, makes the point that there is an environmental assessment process built in. One of these cases can have up to 10 separate disciplines represented, each with an expert, each with a cost. Because of local opposition, the outcome is always in doubt. That translates into risk and risk translates into cost.

What does that mean? First of all, let's add to it another problem, which is that the licence supply is drying up. When the Pits and Quarries Control Act came in, in 1971, all the existing operations were grandfathered. Most of the licences that are out there now are those grandfathered licences. There have been very few who have gone through the process, so that the licence supply is drying up and is not being replaced. The licence supply is being concentrated in fewer and fewer hands.

The cost and the risk are making it impossible for small players to play the game; therefore, we are seeing corporate concentration in the aggregate industry. That can lead to a failure of competition. All those forces do one thing with the price, and that is push it up. You may wonder why the association makes a point of that, because obviously some members of the association stand to benefit from a failure of competition, but the association as an industry group feels that it has a responsibility to be responsible.

Looking at the long run, the industry as a whole will not be benefited, nor will the public be benefited by these trends. We therefore think that the trends ought to be reversed. Just to put some numbers on it, we have done a study. If you were to double the transportation cost—I do not mean the cost per tonne of aggregate—for aggregate reaching Metropolitan Toronto, you would add \$300 million annually to the cost of operating this economy. So I say that the public interest lies in reversing the trend.

Local input is fine, but more local control will exacerbate the problem.



I say that simply because local decision-making is driven by local concerns, obviously. There is nothing surprising about that. The mineral aggregate policy, on the other hand, recognizes that there is a wider public interest that may not be reflected on any particular municipal council. There is local input now, there is local control now, through zoning bylaws and official plans. To increase it is going to exacerbate the situation, because I can tell you that I have not seen and I cannot think of any recent examples of any local council anywhere being in favour of establishing a new commercial operation. They are just not in favour of it. In fact, they are actively trying to block it.

You have heard from the reeve of the township of Puslinch, so I am told. I have spent since November 16, off and on, in the township of Puslinch on a case there. I can tell you that the official plan that was in place prior to November 1988 was put in place in 1973 and designated areas where there was good resource and where new pits and quarries would be allowed. The new plan, which the township council adopted in the fall of 1986, seeks to remove that, to de-designate.

Not only does it seek to de-designate, it seeks to establish artificial barriers to any new pit or quarry. In Puslinch, they chose to ban mining below the water table, knowing that 70 per cent of the resource was below the water table in that municipality. Here is a constraint which is intended, in my submission, to prevent new pits being camouflaged as an environmental issue.

Mr. Wildman: Could it not be both?

Mr. Kellock: I suppose it could be, and it can be addressed, if it is an environmental issue, on a case-by-case basis. If you enact it as a blanket prohibition, it cannot be addressed, it just becomes a prohibition, and that was the case in Puslinch.

The Ontario Municipal Board has been sitting in Puslinch since November 16, 1988, and you can all compute for yourselves the cost per day of that hearing. There is no end in sight. I can safely predict it will not finish before the summer. It may go through November 16, 1989.

There are a couple of key areas where the association would like to see amendments, and I will just give them in broad stroke.

We think the bill ought to reflect the mineral aggregate resource planning policy somewhere. There is a whole list of things, for example, that the minister is to take into account when issuing a licence in section 12; MARPP is not one of them. I would suggest that that is perhaps an oversight, but a very significant oversight. I think this gives some rudder and some direction to the whole legislation.

The other is that there is an opportunity vested in the minister to change the rules of the game after the game has commenced. New conditions can be added to licences.

That is something that some people would call unfair. It certainly increases the uncertainty attached to the situation. Not only is there uncertainty going in as to whether you will ever get a licence—and you can spend \$1 million just finding out—but then if you get the licence and the minister can put a crippling condition on it the next day, that adds to the risk.

Who can play the game when it is so costly and risky? Only the very large corporations. I do not think that is good for the industry; I certainly do not think it is good for the province.

That is really all I have to say, except to say that I think the industry is pleased that the government has finally brought the bill forward. There was certainly no certainty that it ever would see the light of day, given the history of the 1980 bill. I think we would also like to say that the Ministry of Natural Resources has not always pleased us in its decisions but has been rather courageous in bringing this legislation forward and should be commended.

Mr. Chairman: Thank you very much. Before we get to questions, I have been asked by the researcher to clarify the difference in the two documents that we have received.

Mr. Wildman: It is like the Liberal policy in 1980.

Interjections.

Mr. Chairman: Quiet, gentlemen.

Mr. Kellock: I would say the one in green print is extremely detailed. The other one could be called an overview, an approach.

Mr. Chairman: So this is an overview of the brown document.

Mr. Kellock: The white paper philosophy comes first, and the detail in it.

Mr. Wildman: Thank you very much. I appreciate your presentation. I have just two questions. You make the point that you would like to see the legislation comply with the mineral aggregate resource planning policy statement.

Mr. Kellock: Some linkage.

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Mr. Wildman: Yes. Does that also include the statement that as part of that policy, a municipal official plan may require rezoning for a wayside pit or quarry in an area of existing development or particular environmental sensitivity?

Mr. Kellock: I think when I embrace the mineral aggregate resource planning policy, I have to embrace all of it. If you want to talk about how we can improve MARPP, I can certainly get into that.

Mr. Wildman: Okay, I accept that. That is a fair statement.

The other one is that we had a presentation this morning from the cement producers.

Mr. Kellock: Portland cement?

Mr. Wildman: Yes. They said they thought that since they were using aggregate to produce a product with added value, they should not be subject to the same levies that the aggregates industry might be subject to. Do you have any reaction to that suggestion?



Mr. Ballinger: They do not care if you pay.

Mr. Wildman: Yes, they were quite willing to have you pay it, and they thought that if you paid it, it should be directed to the rehabilitation and upgrading of roads.

Mr. Chairman: Their specific argument was that their quarries are usually on site with their cement plant. They do not transport it across roads, so this six cents proposed is an unfair levy to them.

Mr. Wildman: They said.

Mr. Kellock: I guess that assumes that the levy in fact is required by the municipalities to defray these costs. We did a study some years ago that says that is a very suspect premise. I suggest that the royalty is going to be like the gasoline tax. It is supposed to be used to build roads, but I do not think it is dedicated to that purpose. I do not think these levies are going to be dedicated to that purpose. I cannot see much difference between an integrated concrete block producer and an integrated cement maker.

Mr. Ballinger: I made a statement which I believe you have just reconfirmed, after two presentations yesterday, from the Foundation for Aggregate Studies as well as the Ontario Road Builders' Association, and yourself as an industry.

We are very fortunate, Mr. Chairman, to have two other members of the original working party with us today. Crawford Reid and Dennis Schmiegelow are in the audience representing the industry. They were members in the mid-1970s when I was appointed by the Association of Municipalities of Ontario as the municipal representative.

I said yesterday, and it is really interesting, that as things change, they remain the same.

Mr. Wildman: That is Liberal government policy.

Mr. Ballinger: Not at all. Save and except your numbers, the concept and the thrust of your brief today was the same as 15 years ago. It is the same with the Foundation for Aggregate Studies as well as the road builders. Some accused us, incidentally, of using an outdated report as a core, which I found very interesting.

I really do not have a question, but I want to make a comment. I come from an aggregate-affected area, as you know, Uxbridge. We have had a good rapport—it took a number of years—with the industry. I am a strong supporter of designation of a nonrenewable resource and have been since the beginning—well, let me rephrase that—almost the beginning.

I would take issue with your comment that relates to your being hard-pressed to find an application that has been approved in Ontario in recent times. There are certain parts of Ontario where there are good operators who have gone to the table and entered into development agreements with the municipality, where there was a lack in the legislation; where municipal councils, over the years, had to sort of ferret on their own an agreement with the industry because the province, in its wisdom, did not see fit to bring forth the legislation.

One of the problems that our minister has today—and all you had to do

was listen to the original brief at two o'clock, versus your own, if you had been here yesterday—is the dichotomy involved in this particular issue. What the minister is attempting to do is bring forth some reasonable middle ground. I support this legislation based on that premise, that what we have is give and take. Hopefully, everybody should be able to walk away feeling that he got something. But for any one group to come before this committee or the ministry or this government and expect to win his side of the argument is not being realistic in 1989.

Mr. McLean: You already have your mind made up.

Mr. Ballinger: Not at all.

Mr. Pollock: You should come in here with an open mind.

Mr. Ballinger: For me to sit over here and take that from you two guys who were in the government at the time that did not have the guts to do it—don't give me that stuff.

Interjections.

Mr. Chairman: I believe the comment was directed at you, Mr. Kellock. Would you reply, please?

Mr. Kellock: I have just a short comment arising out of Mr. Ballinger's statement. I think the committee should be very careful in approaching this on sort of a theoretical, hypothetical basis. I am certain that some people have come here and addressed this committee who have never been in a gravel case and do not know what they are talking about.

If you want to talk about the environment, think about what part of the environment, what problem you are dealing with. Are you dealing with a water problem? Are you dealing with something that the ordinary house owner with five acres can do with impunity? What are you talking about? When you talk about concrete situations, the thing takes on a very different perspective.

Mr. Pollock: The amendment reads:

"I move that the definition of 'aggregate' in subsection 1(1) of the bill be struck out and the following substituted therefor:

"'aggregate' means gravel, sand, clay, earth, shale, stone, limestone, dolomite, sandstone, marble, granite, rock other than metallic ores...."

There is quite a difference in metallic ores. Sure, nobody would use metallic ores to build a road if they are high-level, but there is some trap-rock—

Mr. Ballinger: Only in Hastings—Peterborough.

Mr. Pollock: —that might have low-level metallic ores in it but it would never be processed or mined or broken down for minerals. Why can't you use low-level metallic ores?

Mr. Kellock: For?

Mr. Pollock: For aggregates.



Mr. Kellock: I suppose you could use anything if it is cost-effective. Studies I have seen suggest that there is nothing in the ballpark other than sand and gravel and limestone at the moment.

If you are asking about why the definition reads this way, I assume it is to dovetail with the Mining Act.

Mr. Pollock: I see.

Mr. Chairman: I think Mr. Scott might make some clarifying comment on this definition, if that is appropriate.

Mr. Pollock: Okay. I am glad to hear from anybody, even Ballinger.

Mr. Ballinger: I guess you are buying the tea, Jimmy.

Mr. Scott: It is the definition of "ore" that is the key word there. "Ore" is an economic term. Any particular rock may have metal in it or gold in it, but it is not an ore unless it is economic to extract that gold or that iron or whatever. That is why that term is used, and by using that term, we are restricting the definition between the Mining Act and the new Aggregate Resources Act appropriately, because we do not want to get involved in regulating open-pit mining for iron or for gold or whatever. That is how it is used. The word "ore" is the key word.

Mr. Pollock: In other words, if it is not profitable to mine for gold or iron or for whatever, then you can use it for aggregates.

Mr. Scott: That is right. Ultimately, you might find something that is uneconomic today to mine for gold or iron. It will be mined for aggregates, such as your trap-rock, or the old Marmora mine there. That conceivably could be mined today for aggregate and some time in the future material that is still remaining on that property might be economic to be mined for iron. At that point in time they would have to go under the Mining Act and get mining approval to go forward to mine the iron.

We were trying to segregate the two, because there is quite a different situation when you are going down many hundreds of feet, like the Marmora mine, compared to relatively shallow operations for aggregate. That is why we have that definition.

Mr. Pollock: It is just a little vague the way it reads. I see no reason why all that trap-rock around Marmora could not be used for aggregates.

Mr. Scott: That is quite true.

Mr. Pollock: I would not want to see something put in a bill stopping that.

Mr. Scott: It does not stop it at the present time.

Mr. Pollock: It does not?

Mr. Scott: No. It just means that if they were mining it for iron, the predominant legislation covering that would be the other legislation.

Mr. Pollock: Okay, fine.

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Mr. Ruprecht: Mr. Kellock, you made some pretty strong statements in your presentation. I would like to refer to your, I think, white paper. You have two papers—

Mr. Kellock: Yes. One is a white paper and one is a green paper.

Mr. Ruprecht: Okay. It is in the white paper on page 9, which talks about the municipal comments every four years.

Mr. Kellock: Yes.

Mr. Ruprecht: When I say strong comments, you are saying here that you feel very strongly about subsection 17(4), which contemplates that the minister shall request municipal comments at each fourth review of the licensee's compliance with the act.

On that same page, you are asking, "What or who is served by a four-year review?" Am I understanding you correctly that the people who are going to be served most obviously by this review are the corporations? Did I hear you say that?

Mr. Kellock: No, I do not think I ever referred to this. I am sure I did not. I did not intend to anyway.

Mr. Ruprecht: If I did not hear you correctly, then paint for me the connection between corporate benefits that the corporations would be getting if this legislation is passed.

Mr. Kellock: From Bill 170 as opposed to the status quo?

Mr. Ruprecht: Yes. You made that connection in the beginning of your statement.

Mr. Kellock: I did not—

Mr. Cook: I think the reference may be to the fact that legislation, both the Pits and Quarries Control Act and this proposed act, is benefiting the industry from the point of view that it is making basically a closed shop for the people who are in the business now. The cost and time are very prohibitive for anybody new coming in. So whatever this act does, it increases regulation and tends to secure that hold on the existing corporations and the existing people that are producing aggregates. I think that is the reference.

Mr. Ruprecht: Back to Mr. Kellock: I do not want to put you on the spot here, but I would like to know from you the answer to your question on page 9 of your white paper. Who is most obviously benefiting by this four-year review, if it is not the corporations?

Mr. Kellock: I do not see any benefit flowing to the corporations, but I think page 9 has a different thought entirely.

Mr. Ruprecht: Then tell me who is to benefit from the four-year review.

Mr. Kellock: We are focusing here on the fact that the legislation seems to invite something momentous or important to happen every four years.



If there is a problem with an operation, it does not make any sense that people should have to wait four years to deal with it. If there is a problem, it should be dealt with whenever it arises. It is almost an implicit invitation to the municipalities who did not want the development in the first place to come every four years and try to get the licence revoked or changed or limited or something. That is the thought we are addressing here.

The other thought, which is quite independent and is not something we advocate, is that the fallout of making regulation more uncertain, more stringent or more vague in many ways, simply benefits the people who have licence to buy.

If you want to get into the gravel business, the amount of capital you are going to have to amass is staggering. You are going to have to say to would-be investors, "It's high risk." I do not think that is a good situation. It would be a much better situation if you could find a way to control the not-in-my-backyard syndrome and the environmental aspects and make it possible for a multiplicity of people to get in the game and all compete with each other.

Mr. Ruprecht: Is it fair to ask you who is served most obviously by this four-year review? Is that a fair question to ask you?

Mr. Kellock: I do not think anybody is, unless it is those who want to make it more difficult to carry on an operation.

Mr. Ruprecht: Just for clarification, and finally: If I get this correctly on page 9 of your white paper, the answer to your question of who is served most obviously by the four-year review is nobody then. Is that it?

Mr. Kellock: Nobody or those who seek to cripple or kill the operation.

Mr. Ruprecht: Thank you.

Mr. Chairman: Ms. Bryden, we have time for a short one.

Ms. Bryden: I wanted to get back to the definition of "environment." Would you accept the definition that is in the act or would you go for the definitions in the Environmental Assessment Act or the Environmental Protection Act? We have those three choices before us.

Mr. Kellock: Practically, I do not think it matters a lot. Practically, when you get down to it, social considerations take in neighbour's objectives. That is already built into the process. I would say that going to either of those definitions is not the way to go because I am very concerned about the extent of those definitions in the environmental assessment field.

I do not think anybody in Ontario knows what the Environmental Protection Act really means. I can tell you it is interpreted by the Ministry of the Environment in a way that would require the insertion of a lot of language in the definition that is not there now. For example, the Ministry of the Environment takes the position that you really cannot pollute your own property. That is not what the act says. The act says that the environment covers the air, water and land everywhere, up, down and sideways. Think about all the things you do without thinking in your back garden, such as zapping dandelions. That is an offence under the Environmental Protection Act, strictly construed.

Ms. Bryden: A lot of those things would be decided by court decisions if the Environmental Assessment Act is challenged, but what it seems to me you are proposing is that you want a fast track to develop aggregates in the province as quickly as possible because the need is so great. But is your fast track going to throw out the baby with the bathwater and not allow for adequate consideration of the residents' needs, the municipalities' needs and the levies that the municipalities want to be able to make to cover their costs?

It seems to me that unless you allow for some of those things, you are not being fair to the other half of the population. You are just saying, "We need these aggregates and the development industry needs them." Nobody considers whether the development industry should be paramount to all those other considerations, protecting the environment and protecting the public.

Mr. Kellock: I guess I am a little lost because I did not know we were advocating a fast track. We are simply advocating, "Don't make it worse than it already is." There is no question that all of those concerns are thrashed out ad nauseam now. There is more protection than is required now. We are saying, "Don't add to it."

Ms. Bryden: You—

Mr. Chairman: I am going to interject and thank the gentlemen for their presentation. Ms. Bryden, we are out of time for this group and others are waiting.

Our next presentation is by the Canadian Land Reclamation Association. Tom Hilditch, president of the Ontario chapter, will be making the presentation.

#### CANADIAN LAND RECLAMATION ASSOCIATION, ONTARIO CHAPTER

Mr. Hilditch: I am here representing the Canadian Land Reclamation Association. Some of the comments I will be making you have heard from other groups already. I understand you had a presentation from the Conservation Council of Ontario yesterday. Our organization has participated as an associate member of that group in the review of the bill. I am here today to present, more specifically, some comments and interests from the Ontario chapter of the CLRA.

I have submitted a brief and that brief—I will not go through all of it—covers nine points that I would like to mention. My comments will be relatively short today.

First, I would like to start by saying that the CLRA is very pleased to see Bill 170. I know everybody has been anticipating it for some time. We are especially pleased to see the tone of the bill and its appreciation for land rehabilitation or reclamation. I think it has made major strides over previous legislation.

I have had an opportunity to briefly review the amendments and a number of our concerns have been addressed by those, but I will go through our remaining comments as an association. We have organized our brief in conjunction with Bill 170 for ease of review. You will notice after each of the point headings, we have the act subsection number.



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Our first concern is in subsection 4(1), qualifications of an inspector. The subsection seems to indicate that the ministry may appoint any ministry person to act as an inspector. We want to make mention of the ministry's existing program upgrading the talents and skills of its personnel who are involved in this work. We would like to see continued support of that program and suggest that the bill be specific in suggesting the minister designate only trained aggregate resource inspectors for this purpose.

Toby Vigod touched on our second point, the geographic application of Bill 170. We recognize and support the opportunity for this bill to apply equally across the province. The sooner that occurs the better.

Our third point on page 3 of the brief, qualifications of site plan authors: Currently, Bill 170 suggests that site plans for class A licences be prepared by landscape architects, engineers and land surveyors. We are concerned that the suggestion has excluded a number of other groups that have qualifications to prepare site plans. In particular, there are environmental planners and related groups who would have the abilities to take a site plan through the many disciplines involved in a proper site plan review for a larger operation.

It is a difficult thing to wrestle with. How do you get more people involved in that site plan preparation process? We have suggested here that perhaps examinations would be a suitable approach for certifying site plan authors. There is a certain amount of difficulty in establishing examinations, and there would be a fair investment of time and money in order to establish those examinations.

Another suggestion has been that the site plans prepared should be submitted and allowed to stand on their own, allowing the ministry to ensure that those site plans reach the standards that it is expecting, regardless of the professional who is involved in the site plan preparation. We would like to suggest that this aspect be examined more closely.

The fourth comment relates to sections 7, 8 and 9, licence requirements for classes A and B. I am not an aggregate operator. I do not have an appreciation for what 20,000 tonnes a year looks like. I know it is relatively small, but the CLRA has some concerns that perhaps we should be looking at licence requirements based on site characteristics as opposed to a specific aggregate quantity specified.

As you heard from the Conservation Council of Ontario, and probably others, yesterday, we are concerned that small operations in a particularly biologically sensitive site could have larger impacts than a larger operation in a less sensitive environment.

On the other hand, the CLRA also recognizes the need to take a practical approach to this legislation, and as a number of our members are aggregate producers, we recognize that there may be some need for a break point where a certain level of detail is necessary.

What we would like to suggest is that the 20,000 figure be reviewed and that the site itself be the leading factor in that particular case. We would also like to suggest that for both class A and B licences, the site plans be prepared by certified professionals.

The disbursal of fees for rehabilitation, on page 4, our point 5: It comes through in a few cases where there is reference to disbursal of moneys to the municipality and disbursal of moneys from that fund to rehabilitation for research or the rehabilitation of abandoned sites. In the cases where it refers to giving the money to the municipalities, the word "shall" is used, and in cases where it refers to giving moneys for rehabilitation, the word "may" is used.

I understand that perhaps the reason for it is that once all of the abandoned sites are rehabilitated, there may be no need to further invest money into that fund; hence the "may" in that particular case. We are suggesting, to demonstrate a more firm commitment to rehabilitation, references to "may" in those three subsections we have listed there be replaced by "shall."

The aggregate permit application in subsection 36(4): As with wayside permit and licence applications, the aggregate permit site plan should include identification of "any significant natural and man-made features." This relates to what Toby Vigod said with respect to site plan specifications. There should be some consistency between all of them.

Our seventh point: Aggregate extraction under water. We are concerned that the aquatic, biological, natural resources have not perhaps been given enough consideration in this proposed bill. There is potential for significant fisheries and other aquatic resources to occur in areas where extraction is permitted under water.

We would like to suggest that site plans for aggregate permits for lands under water, in whole or in part, should include an inventory and assessment of the quality and importance of aquatic biological resources. The acceptance of such an application should consider the impacts on those aquatic resources.

As well, we have suggested some consideration be given to building into the bill some further, more detailed aquatic rehabilitation guidelines, as the technology in this area has advanced a fair amount in the last few years.

Point 8: Waiver or discretionary powers. We have heard from a number of groups that they are concerned that the minister may have too much power in this particular bill or too much discretionary power. We, as a group, believe that can be positive and negative. The only three areas we were concerned with relate again to rehabilitation.

There were three sections: section 49 and section 51 with two subsections. Where the minister had significant abilities to waive or reduce rehabilitation requirements or advance payments and security, we would like to suggest that those occurrences should not be very frequent. We would be more comfortable seeing the circumstances under which those would occur built into the bill in those sections.

The final point, point 9: Notice of application. I understand that one of the proposed amendments has indicated signage will be placed on all sites for proposed licence applications. We are still concerned that perhaps that does not include changes to existing applications, major changes, and we would like to suggest that be considered.

We would also like to suggest, in our final point, that newspaper notification should perhaps be in two successive issues as suggested, but perhaps also in two successive weeks, to broaden the potential for people to see the advertisements or the notices in the papers.



Those are the formal points we wanted to deal with. As well, the CLRA just wanted to offer its services and abilities, as a group of professionals involved in rehabilitation, when it comes time to deal with how to assess the effectiveness of rehabilitation or to try to develop guidelines or criteria for determining how effective and successful vegetation cover has been.

We would like to offer our services in commenting on that or providing some sort of technical discussion. I understand that is a point that has generated a lot of questions. Thank you.

Mr. Chairman: Thank you very much, Tom. The question order is Mr. Pollock, Mr. Wildman and Ms. Bryden.

Mr. Pollock: You mentioned that you would like to see all the plans drawn up by professionals. Who is drawing up the plans now? Are they not all drawn up by professionals pretty well now?

Mr. Hilditch: Yes, my understanding is that they are drawn up by surveyors, engineers, professionals involved in those fields, and it is proposed to include landscape architects. My comment is that there are other professionals who have the abilities and perhaps are better suited for preparing certain types of site plans in certain circumstances.

Right now there is a facility for those people to prepare site plans, in that they can demonstrate their abilities to the ministry and obtain certification through that process on an individual basis, but we are suggesting this may exclude groups that should be given notice in this bill.

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Mr. Pollock: I see, as far as professionals involved in that business are concerned, but does experience not count too?

Mr. Hilditch: That is a good point. Sure.

Mr. Pollock: Because, if I were getting my car fixed or anything, I would not only want a professional mechanic but would also want one who had some experience. That is what I am kind of coming at.

Mr. Hilditch: Sure. We are not sure how to deal with the suggestion of whether it should be by examination or grandfathering all of the people with current certification and allowing a larger group of people to participate. We have a specific suggestion of examination in here. I am not sure that is the most appropriate route to go.

Mr. Pollock: Thank you.

Mr. Chairman: Mr. Faubert has a supplementary to this question.

Mr. Faubert: I would just like to clarify this, because I can see your concern if those are defined as exclusionary. The very last sentence of that says "or by any other qualified person approved in writing by the minister."

Mr. Hilditch: Sure.

Mr. Faubert: Does that not take away the exclusionary aspect that your concern raises?

Mr. Hilditch: It does. It just forces the individuals with an interest in preparing those plans to go through a process with the minister, apart from those three groups. I think it is a little misleading in that not every engineer, not every surveyor has the ability to prepare plans. I would be tempted not to specify groups at all.

Mr. Faubert: That was my next question. You would rather not specify particular groups; you would rather it just be open. As you point out, certification should be open to any resource management professional as determined by the ministry.

Mr. Hilditch: That is right, and that would have to be demonstrated to the ministry via portfolio, examination or some sort of standard that the ministry would review.

Mr. Pollock: The minister ought to send Mr. Ballinger.

Mr. Chairman: That would probably be part of the deal at this point. Mr. Wildman.

Mr. Wildman: Are you suggesting that he could make vegetation grow very quickly?

My understanding of the amendments that are being proposed under section 8 is that the plan does not have to be drafted by an engineer, a land surveyor or a landscape architect himself or herself but could be done "under the direction of and certified by such a person."

Mr. Hilditch: Sure. I think that is quite a reasonable amendment. Considering that when you look at what a site plan should require, you need somebody who has the ability to tie together hydrogeology, surface water, fisheries and revegetation, I think that is a reasonable approach. Again, I would be tempted to make it very generic and either have the site plan stand on its own and let the ministry weigh its merits, strengths and weaknesses or institute some sort of standard certification program.

Mr. Wildman: Could you give me some more information about your group? Whom do you represent? Who is the Canadian Land Reclamation Association?

Mr. Hilditch: It is a group that was established in the early 1970s. It has its roots in the Ontario Agricultural College at the University of Guelph. It started with a lot of agronomy professionals and a focus on aggregate rehabilitation in the early years. The membership has grown to close to 300 nationwide now, with about 60 or 65 people in Ontario.

The membership includes biologists, aggregate producers, mine rehabilitation specialists, agronomists, fisheries types, a real range of professionals, all of whom have an interest in the proper restoration of lands that have been damaged from aggregate pits, mine operations, landfilling and from road construction, a full range of activities.

We have a very specific interest in this piece of proposed legislation.

Mr. Wildman: Finally, could you give me some idea of what your own professional qualifications are?

Mr. Hilditch: I am a senior biologist with Gartner Lee Associates Ltd., a consulting firm in Markham. I have eight years of experience, focused



primarily on vegetation management and rehabilitation of sites like landfills and pits and quarries.

Ms. Bryden: I am very glad that you came before us to sort of swing the focus away from producing new pits to rehabilitating pits that have been or may come to be in the future. In the past, our rehabilitation laws have been there to some extent but very poorly enforced, from what I understand from what is left in many parts of the countryside in the way of abandoned pits.

I like particularly your suggestion that the minister should not be allowed to waive the rehabilitation requirements, except in very specific cases which should be spelled out. Can you give me any idea in what particular case you would like to give the minister that power to waive rehabilitation?

Mr. Hilditch: To be honest with you, I would like to think about that for a couple of days and come up with some suggestions. I have not had time to consider that or discuss it with our directors thoroughly enough.

Ms. Bryden: I think basically your thrust words, that there be no waivers except by specific legislation, is a good principle. I do not think it has been mentioned before at these hearings.

The other thing that I like, of course, is your firm belief that the aquatic features of pits, the underwater and the biological resources therein, are very important. Do you think the act does adequately cover those particular features that need protection under this act?

Mr. Hilditch: No, I do not think it does in its current state. To be fair, it is a very difficult thing to wrestle with. It is one thing to be able to rehabilitate visual resources that are sitting there—everybody sees them, every drives past them—but when you are dealing with something like fisheries and spawning grounds and importance and relative importance and quality, that is a much more difficult thing to wrestle with. What I suggest should happen is that there be a little more specific guidance built into the bill regarding aquatic rehabilitation, because it is an important aspect.

Ms. Bryden: Your demand for more notification to the public, that there should be on-site signage and two ads in local newspapers, I think has not been mentioned as often as we would like. In the past, many of these licences were granted without the public knowing a great deal about it. I have always been in favour of on-site signage, so that people know what is going in their area and can then organize themselves to go and oppose or at least speak to the application.

Finally, you mentioned that you would favour a complete, 100 per cent coverage or designation of the province for this act. Do you think that would be difficult to enforce or very costly to enforce, should the present designated area be greatly extended? I understand it does not cover anything in the north except Sudbury. Is that correct?

Mr. Wildman: Sudbury and Sault Ste. Marie.

Mr. Hilditch: I imagine it would be expensive and difficult to do. I think it would be fair to do that. I see all of this leading to the need for much more money for a group, like the Ministry of Natural Resources, in the aggregate resources and rehabilitation end of things to be able to do the job properly. If we are talking about a lot more rehabilitation and expecting them

to cover much broader areas, I think it would be only fair to provide the resources to do that. But you are right, it is probably going to be very difficult.

Ms. Bryden: But as you say, why should one section of the province be favoured with some regulation and others be neglected? This is the problem that I think the committee has to face up to.

Mr. Hilditch: Sure.

Mr. McLean: Why do you suppose that Frontenac, Lennox and Addington were left out of the southern part on the map? Have you any idea why that would happen?

Mr. Hilditch: No, I do not.

Mr. McLean: Perhaps the parliamentary assistant may be able to clarify that part.

Mr. Ballinger: You better not want to ask me that question, because you might not like the answer from the previous government.

Interjection.

Mr. Ballinger: I was being kind.

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Mr. Wildman: On a point of order, Mr. Chairman: If you would be interested in providing some information about what the criteria might be—you said you would have to take a couple of days to think about it—the committee would be very happy to accept any recommendations you might have in writing.

Mr. Hilditch: Sure. How much time would you give us?

Mr. Wildman: We sit next on April 17.

Mr. Chairman: For any people coming before the committee, in particular if you want further clarification of any of the comments you have made or anything pertaining to Bill 170, we would appreciate receiving that in writing at a later date. We are going to be meeting again to consider clause by clause the week of April 17 and the House reconvenes on April 25. It is out of our hands when this may come to the House, but it is a couple of months that you have at least.

Mr. Hilditch: Excellent.

Mr. Chairman: There should be lots of time.

Mr. Hilditch: Good. Thank you very much.

Ms. Bryden: Draft amendments would be useful in your version of what should be added in some of these fields.

Mr. Chairman: Thanks again, Tom. We appreciate your presentation very much.

Our final presentation this afternoon is by the Mulmur-Mono Coalition. Brian Hope and Joan Hope are the presenters and I ask them to approach the presenters' chairs.



## MULMUR-MONO COALITION

Mr. B. Hope: I believe that copies of our brief have been made for the members of the committee. There is a second sheet I put in after seeing some of the comments in Hansard and so on. I wanted to make it clear that our group supports the idea of a new bill to replace the Pits and Quarries Control Act, but we see some serious problems with the bill. I think as my presentation develops you will see why.

I would like to thank you for inviting us to appear. I will explain why we were formed as a group and what we have done to date.

A little history: In the late 1960s, an 8.5-acre parcel of land was sold to the Dufferin County Board of Education to erect the Mulmur-Mono Area Elementary School. This was at the time of consolidation of school boards. At that time there was a great deal of controversy within the area about the purchase. There were some questions about the problems of locating it where it was. On one side of the parcel there was a very small—and I am quoting from the residents of the time—"truck and shovel gravel operation," much smaller than what shows there. There was a great deal of work done there just in the last couple of years. On the other side was a 145-acre farm belonging to the vendor of the parcel where the school was built. There is a plaque in the school's foyer which commemorates the opening of the school in 1968 and the vendor's name appears thereon as deputy reeve of Mulmur township, wherein the school is located.

In 1973, five years after the opening, Mulmur drew up its first official plan, which designated the vendor's lands for aggregate extraction. We looked very hard to find some declaration that the councillor did not participate in those discussions, but we cannot find any such thing. As far as we know, there was full participation.

Some time later, in the late 1970s, these lands were included in the Niagara Escarpment plan as a protected area, a designation which perhaps would have prevented their use as aggregate extraction lands. However, the property was removed from the escarpment plan at the request of the Mulmur council, and our friend was on the council at that time.

In the spring of 1986—

Mr. Ballinger: A pretty popular guy.

Mr. Hope: We do not want to get into that.

Mr. Ballinger: There is no point in asking you if he is still with us or not.

Mr. Hope: Yes.

Mr. Chairman: I hope you do not continue this too long. It is bringing back a lot of fond memories, Brian. I was principal of the Orangeville High School when all this was going on.

Mr. Hope: There you go. You maybe know who I am talking about.

A chance remark in 1986, in the spring, by the Mulmur-Mono custodian led one of the residents to the information that there was a conditional offer to purchase on this land and the condition was that a licence could be obtained

for the property. There was some question about zoning and so on and proximity to institutional uses.

When this information leaked out—and I must say it leaked out; nobody told the school board, nobody told anybody, but it leaked out—some 400 residents and parents packed the school gym. Now this was a parents' association meeting and normally we would think 20 was a great turnout. It is a very small school with 245 students at that time. It was a very heated meeting. Everybody was strongly opposed to the whole idea of having a major, enormous gravel pit next to a small primary school, except of course the man who was selling the land and another fellow who owns the land across the road, which is also zoned for aggregate extraction. The upshot of that meeting was the formation of our group, which is formally and correctly called the Mulmur-Mono Coalition Against Aggregate Extraction Adjacent to the Mulmur-Mono Area Public School. You can tell that is a committee title. I will call it the coalition. It is easier.

Mr. Ballinger: What is the quick short form?

Mr. B. Hope: The coalition. Oh, you want an acronym. No, that is not polite. Anyway, the coalition was incorporated at that point for the purpose of carrying community opposition to this proposal before the various levels of government.

The Dufferin County Board of Education and the Toronto Board of Education, which has a residential outdoor school near this site just slightly northwest of this aerial photograph, also began to voice strong opposition, as did other groups and individuals throughout the area. Council was repeatedly approached by several groups opposed to the extraction and did not do anything except uphold the zoning, saying, "It's zoned and that's it."

Notwithstanding the opposition, matters proceeded, culminating in an Ontario Municipal Board hearing in 1987. I should point out that in 1986 the proponent took over operation of the small gravel pit and took out more gravel in that year than had ever been taken out before. There were severe problems for the school. Kids had to go home at some point. Kids were held out of school by their parents. Some teachers were unable to work in the school due to dust and noise problems. It was on the television and it was in the Globe and Mail. It was really a major problem as a result of a change of operator.

The members of the OMB heard many presentations, with those appearing for the proponent being in favour, understandably, and all others with three exceptions being opposed. Exceptions were the vendor and the owner of the land east of the school, which is also now zoned for aggregate extraction as a result. The county engineer turned up and there was reference to county officials and municipal officials being held out the hope of cheap gravel. That is exactly what he said. I might also point out that five per cent of the combined licensed output of these two pits would satisfy all the county's needs for a year. It is not a major requirement in the area.

We had some rather novel experiences at this OMB hearing. There was personal intimidation. There was financial intimidation. Witnesses, professionals were told that if they appeared, they would never get another job in Ontario. This was in front of witnesses. It was quite amazing. It was more like a soap opera than I would expect a public hearing to be in this province.

Mr. Ballinger: You ought to be around here some days.



Mr. B. Hope: I have been reading Hansard. It puts you in a certain frame of mind, I must say.

Testimony from the Ministry of Natural Resources indicated that there was no shortage of gravel in the region. We come under the Huronia region. Other testimony from professionals cited inappropriate zoning—in fact, there was an opinion that the zoning did not allow this—health problems, noise problems, safety hazards and so on. Witnesses for the proponent were very practised. They do this regularly for various gravel operators. They have done it before for this particular operator, who has several other pits in the province.

The upshot was that the zoning was upheld with no consideration of its propriety or correctness. It simply turned on whether the zoning was in place. There was no consideration given to the other matters.

Our group then had a meeting with the minister, at which he was urged not to grant the licence due to the unique circumstances. The monitoring equipment that has since been placed on the school by MOE shows that when the small pit that is currently there operates, the dust levels and particulate levels at the school are over allowable standards. Every time the monitoring coincides, it goes over standards. That is why we are concerned about the big pit.

However, the minister has granted the licence, subject to certain as yet unknown conditions. It was in August of last year that the licence was granted and the conditions have not come down yet. We do not know what is holding them up. However, the proponent was denied an asphalt or gravel plant on site by the OMB.

Mr. Ballinger: On a point of order, Mr. Chairman: Perhaps I might just take a second on behalf of the minister, as I am his parliamentary assistant, and qualify for you that those conditions are imminent.

Mr. B. Hope: I realize that.

Mr. Ballinger: It is because of the nature of the proposal and all the situation that it has taken some time. The minister has taken the time to look at all aspects of that decision by the Ontario Municipal Board, but that decision is imminent. In fact, I think you would get that almost any day.

Mr. B. Hope: I appreciate that. I am just trying to give the history to the other members of the committee. It is a long gap of time.

As I say, the OMB denied the asphalt or concrete plant. Now what has happened is that we are presently engaged in a further battle over the proponent's plan to have council change its official plan, which denies these plants, and allow such plants into the township, which would make our township different than any other township around us.

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Again, we are experiencing personal and financial intimidation of individuals, and also the township, through its council. As an example, one resident wanted a severance and the proponent's lawyer went and opposed the severance because that resident opposed the asphalt plant, and by letter as well.

The point is that the existing Pits and Quarries Control Act could not protect this school. I have not run into anyone yet who thinks a school and a gravel pit are compatible adjacent uses. All parties except the licensee agree that children will experience harm from the Cox pit, whether it is deterioration of their health or their learning environment through noise, etc.

The new bill, Bill 170, appears to offer even less protection than its predecessor. I have read Hansard. I have read several submissions including that of the Foundation for Aggregate Studies, the Niagara Escarpment Commission and others, and I must say in particular that our group strongly concurs with every recommendation the foundation makes. They really are the experts outside the industry or outside this House on that particular problem and I have to go along with what they say.

The bill talks about the environment, rehabilitation and other public concerns, but in fact it does nothing to protect the citizens or the environment from whatever any operator wishes to do. It does not prevent licences from being issued in areas where they may be inappropriate and it does nothing, because it permits the use of regulation and ministerial discretion, to decide all the important matters.

When a citizen's group tries to deal with a problem such as we have, the deck is stacked against it. First, all parties in dispute are using the citizens' money. Let me explain that. The citizens are using their own money, whatever they can spare or raise—we had bake sales and all the usual things—the hearing officers or courts are being paid out of tax money, which is the citizens' money, and any government body such as school boards and councils are using tax money from the citizens.

Now, the proponent is well funded. He brings in whatever help is necessary, and things have gone up over six figures. He is not using his own money either because this is a business expense and he can qualify for a tax rebate, which comes from general tax revenues paid by the citizens.

Our experience would indicate that the Ontario Municipal Board may not be the best forum for such hearings. In our case, the board showed a strong bias against the public. The public presentations were heard grudgingly and for a very limited time. In a four-week hearing, one day was permitted for public objections, including those of the Toronto school board and groups such as ours.

The board members asked certain people to leave the room. One lady had a child with her. The child was not making any noise, but they thought it was inappropriate that a child should be there.

Mr. Wildman: Did the child attend the school?

Mr. B. Hope: It was a child just preschool age. The mother wanted to be there to speak about health problems of her other child.

Mr. Wildman: I am just wondering if they thought it was inappropriate for the child to be in a school in the middle of a gravel pit.

Mr. B. Hope: Yes. Anyway, the board members had problems understanding some of the issues. In one case, the Toronto Board of Education's representative was told to stand up straight because he was leaning on the lecturn. You had to be there to see it. I could tell you some other things. It was theatre.



There was no proper record kept. There is no such thing as the recording we have here, and that is something that really appalled all of our members of the public. There is no record. There is nothing you can go back to and look at. We suspect the consolidated hearings board is probably a better forum.

The bill must make provision for intervener funds and costs for citizen groups. There is no way citizens can afford the kind of experts the industry can afford. Board members tend to be swayed by those who have the most qualifications and experience.

Members of this committee represent all parties in the Legislature. Many of you have experience in government, and I guess more of you have experience in opposition with various governments. We know the government changes from time to time and ministers come and go. This bill places a lot of power in a minister's hands. Suppose a minister is from the industry, has ties to the industry or financial support from the industry, which could happen. Do you want to place the power of this bill in such a minister's hands? You do not know who the minister is going to be in future. I think it is inappropriate because you are going to have ministers come and go.

One other thing: Ministry officials, in whatever the ministry is, are comfortable with those from the industry they regulate. Those are the people they deal with on a day-to-day basis and sometimes they will see the public, who are, after all, their employers, as a nuisance and an irritant to be dismissed with little thought or consideration. The Legislature must frame the legislation to protect those citizens, not just the business people who can afford the help. The Legislature is the only group representing the citizens, and it should not be seen to represent an industry in opposition to the citizens.

I repeat, it is a flawed bill because of its dependence on regulation and ministerial discretion.

We support what the Foundation for Aggregate Studies says and we cannot support the bill without these major changes. No one disputes that the supply of aggregate is essential to the province. It is a booming economy. But how much supply? The presently licensed pits, according to testimony at the Ontario Municipal Board, do not have a problem meeting that demand.

We discovered that Ontario limestone is being exported to the United States and sold as cement powder at 60 per cent of the price in Toronto, I believe the Globe and Mail said. Some aggregate is going over the border. And we have discovered there is a plan to export limestone to Britain. It must be awfully cheap to produce in Canada if that is the case.

We just question how urgent a need exists that could possibly justify such a loosely framed bill. It is not a war emergency or something. Let me be more specific on certain sections of the bill. In Part I, clause 3(2)(c), the minister is to make estimates, and such estimates should be of demand within the province. There should be some way to frame this as to what demand is there. It does not talk about that. We very much doubt that the people of Ontario support large-scale exports of this nonrenewable resource, particularly when it will be required by future generations—I do not know what would replace it—and since its extraction is so disruptive.

Testimony by Ministry of Natural Resources personnel at our OMB hearing made it clear that our area, the Huronia region, if anything, is oversupplied with aggregate and there is no local or regional demand for the massive output

of the pit we are faced with. We strongly believe site-plan requirements should be the same for all aggregate extraction, to create the level playing field some people have talked about.

Further, the applicant should be required to show uses in buildings of all property within 1,000 metres of a site, instead of 150 and 500 as in the proposition, as well as all water wells on and within 1,000 metres of a site.

Given this bill, through a severance, this property could have been changed in such a way as to completely exclude any mention of the school in the application. That is why we say 1,000 metres. This information is easily available to a proponent. Let's include it in a site plan.

The water wells brought forward at the OMB hearing amounted to a fraction of those present. There was no effort made to find out what water wells were there.

At the OMB hearing, as I have said, it appeared the proponent made little effort in these areas. For example, the fact that there were two schools, not just one, was a complete surprise to the proponent.

The municipality should be permitted to restrict pits and quarries by the use of bylaws. If the municipality is aware of conditions in its area that require stricter controls, that should not be overridden by this act. The municipal government is responsible to the local citizens and is aware of conditions in its local area, or should be.

Licences should not be transferred or renewed without ensuring that they are brought up to the latest standards for site-plan and operating conditions. In particular, transfers or changes of operators should be treated as a new application with full public notice and comments. A hearing should be granted if the public requests it.

The small pit adjacent to our school was, if anything, a minor irritant. Some years it did not even operate while under the previous operator. When Cox Construction started operating that pit, it immediately became a major problem for the school. It was something they had lived with before. They could not live with it once it started up again under the new operator.

There is no justification for permitting the minister to waive, rescind or vary site plans or conditions without full consultation. This would allow an acceptable site plan and conditions to become unacceptable overnight and it could encourage abuse or the appearance of abuse. Caesar's wife should be seen to be virtuous, not just be virtuous.

If the act is going to depend on the existence of zoning bylaws, some mechanism should be in place to ensure that such zoning is properly created and public concerns addressed. In our municipality, up until recently there would be three readings of a bill in one day, two before lunch and one after, and then it would be in place with no notice, no comment, nothing. We have had several problems with that.

Again, the present situation encourages abuse, as presented in the bill. In several places this bill uses the wording, "The minister may revoke a licence," or, "The minister may suspend a licence." We feel the word "shall" should replace the word "may." We are faced with a situation where we can have a clear violation, can have environmental standards exceeded, and there is no mechanism in place to go back to the operator immediately when the problem exists. We feel that should be there.



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When you say the minister "may" suspend or revoke, you give the appearance that the minister could appear to favour certain licence holders, as the bill is written. This possibility should not exist.

Under part III, wayside permits, item 1 uses the undefined term "vicinity"; the wayside is for work in the vicinity. What does that mean? An applicant might argue that this allows a wayside for a project many miles away. We have become very familiar with a lot of areas' problems with wayside pits. I might add that our group would like to see the use of waysides greatly reduced and generally restricted to very local and time-limited municipal purposes. Our municipality has used them very responsibly for its own purposes and I do not think anybody objects.

In several places, this bill discusses those matters to be considered prior to the issuance of a licence or permit. We see a glaring omission in each of these clauses. There must always be a requirement for public input and also hearings if requested by a legitimate group.

In part VI, we feel clauses 47 and 49 have no place in this bill since their effect is to completely negate the rest of the bill if you allow such wide exceptions. Similarly, those items covered under clause 67 should be covered by legislation rather than being left to regulation where this group has no oversight. Last, clause 68 should be deleted as it places unwarranted powers in the hands of a minister, and as mentioned above, essentially negates the entire bill.

Thank you very much for your time.

Mr. Chairman: Thank you very much for your very good presentation.

Mr. Wildman: Thank you very much. Again, I want to express our appreciation for your coming and making your presentation.

Frankly, keeping in mind the comments of the parliamentary assistant that the minister's conditions are forthcoming—I hope they are not going to be too much longer—you are faced with a situation where potentially you could have a school on an island surrounded by aggregate extraction operations.

Mr. B. Hope: Absolutely. You can see the situation. There is rich gravel all around the school.

Mr. McLean: Is there not a highway alongside it?

Mr. B. Hope: Yes, but there is also gravel south of the highway.

Mr. Wildman: So potentially this could happen.

Mr. B. Hope: It certainly could, and that is what we are faced with right now.

Mr. Wildman: You said the Ministry of the Environment has a monitoring system now.

Mr. B. Hope: That is right.

Mr. Wildman: Is this placed on the roof of the school?

Mr. B. Hope: It is now on the roof of the school, yes.

Mr. Wildman: You indicated that when the smaller operation that has been expanded by Cox Construction is operating, the MOE monitoring shows that the dust levels at the school are above the accepted levels.

Mr. B. Hope: That is correct.

Mr. Wildman: What happens when that is determined by the Ministry of the Environment? Does that mean the operation has to shut down or does the school shut down or what?

Mr. B. Hope: There is a matter of a time lag. My wife can answer it.

Mrs. J. Hope: It is six weeks before we get the information that it was over the limits. They are putting new monitoring devices on now, but unfortunately the school does not have the electrical capacity, so they are not hooked up yet.

Mr. B. Hope: The previous system pumped air through a filter for one measurement and that filter is sent to Ottawa. The filter is burned away and the results measured. The other type, the dust fall, is a cup. It collects over a period of time and it is sent away and weighed. There is a vast time lag; it is not instant.

Mr. Wildman: Yes, I know.

Mr. B. Hope: The new stuff will be, but it is not in place because the school does not have the power to run it.

Mr. Wildman: I know the problem you are talking about in terms of time lag. There is a similar situation in my area, an area that is not designated under the present act and will not be under this new act, because I am in northern Ontario and we are treated differently.

Mr. B. Hope: I might add, if I could insert it, that our group feels the entire province should be covered. I cannot see why kids in Algoma—I believe that is your riding—should be different from kids in Toronto, for instance.

Mr. Wildman: If you have a six-week time lag or even a two-week time lag, then you have the problem of kids or teachers potentially having respiratory effects and nothing is done.

Mr. B. Hope: That is why the new equipment has been installed, but it is not yet operational. I might add that this pit has been kept very quiet while we await the results of the licence conditions for the new pit. Each pit licence is 300,000 tonnes, more or less; each one.

Mrs. J. Hope: Since the monitoring device has been on the school, the pit has only been opened for about a week, last May, and they have not really had much activity in it since then.

Mr. Wildman: I see. I have just a couple of other questions. While I appreciate the comments you have made in your brief, I am a little bit surprised by your comments about ministry staff at the Ontario Municipal Board hearing, because it appears from what you are saying that the ministry staff did support you in a way in pointing out that there was not a great need for



aggregate locally in the district and that the need was being more than adequately met.

Why do you seem to be also saying that the ministry was not appearing on your behalf as legitimate, concerned people in the public during the hearing? I am just reading what you said.

Mr. B. Hope: The particular ministry geologist who is in charge of the area was very helpful in presenting facts, which were straightforward facts, of how much was available. But that is the limit of what the ministry will do. You cannot get information about outputs—

Mr. Wildman: Or market demand.

Mr. B. Hope: —or market demand. There is no information available to the public; or at least, it is not being given to the public at the present time. It is not easily available. They are working to the rules they have.

Mr. Chairman: We are short on time. There are three more questioners.

Mr. Wildman: Okay, I have just one short question. What assistance did you receive from the school board and your local MPP in this matter?

Mr. B. Hope: That is an interesting question. Our local MPP was chairman of the school board at the time this started and she subsequently has gone on to higher things. She is Mavis Wilson and she has been extremely helpful to us. Our local school board started and carried forward with a legal challenge to this, and so on. I might add, for the benefit of the members of the committee, that what it appears will happen is that the taxpayers of Ontario will foot the bill for building a new school elsewhere so that this licensee will have access to his gravel. We are talking about \$3 million to \$4 million from the taxpayer which really will directly benefit one licensee.

Mr. Ballinger: There is equity in the property.

Mr. B. Hope: The way the grants work at the Ministry of Education, you sell it, you lose that money and then they give you back money to buy a new one, so you do not end up ahead.

Mr. Ballinger: But there is still equity in the property, in all fairness.

Mr. B. Hope: It is not going to benefit us greatly.

Mr. Wildman: Maybe a new school could be one of the conditions.

Mr. B. Hope: That is something we tried for.

Mrs. J. Hope: It started at the very beginning.

Mr. B. Hope: That is where we started. I appreciate that.

Mr. Ruprecht: Mr. Wildman touched on my next question, actually. Were you here when Mr. Kellock made his presentation for the Aggregate Producers' Association of Ontario?

Mr. B. Hope: I was not here.

Mr. Ruprecht: He presented us with two papers. I call one the white paper and one the green paper. You will be getting a copy of it. In the white paper, on page 5, they say that, more simply put, we are using aggregate at a rate three times greater than the amount licensed each year.

Do you have any information that would lead you to give us figures or statistics that would counter their argument that we are going to be running short very soon, and indeed that we are using three times the amount necessary?

Mr. B. Hope: I would question how that is possible and I would also point to the figures brought forward by the Ministry of Natural Resources geologist at our hearing, and to the county engineer and to our own municipal users, which are nowhere like the output just from our own townships, never mind the other townships in the county.

Mr. Ruprecht: But the statistics you received at that meeting were specifically only in your area?

Mr. B. Hope: Huronia region, which supplies a great deal of gravel.

Mr. Ruprecht: So you have no other input?

Mr. B. Hope: As I say, if you are using three times what you are producing, that seems totally insupportable. I know that some projects are being done almost completely with recycled gravel. For instance, terminal 3 at the airport at Toronto is being done almost totally with recycled material. I understand from Hansard that the SkyDome is being built that way, and those are massive users of concrete.

If we have the exports—and I question where these figures are coming from—are we talking local use, use within the province, or total use, including exports?

Mr. Ruprecht: You may want to get a copy of that.

Mr. Chairman: Your question, Mr. Ruprecht, might be addressed to the MNR people when we are doing our wrapup tomorrow afternoon. They will probably have an overview of the province.

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Mr. B. Hope: At the beginning of the bill, it says in clause 3(2)(c), "estimate from time to time the demand." That should be done by the ministry and not by the industry, because the industry has a completely different agenda than the ministry or the people might have in Ontario.

Mr. Sola: I am intrigued by the statement you make on page 6, "Thus municipalities must continue to exercise control over their own backyards." At the beginning of your brief, you tended to point fingers at the very municipality as being the source of all your problems. Would you mind clarifying that to see what you do prefer: whether the municipality should have final say over these matters or whether it should be at a higher level?

Mr. B. Hope: I initially started with a clause-by-clause discussion, which I thought would tire you, and I have that still, the point being that previously, as I understand it, a municipality could be more restrictive than the act. The way this act is written, if the municipality is more restrictive, its bylaws become inoperative.



What I am saying is, if the citizens can talk a municipality into being restrictive, that should stand and the act should not override it. The municipal government should be responsible to the citizens based on its own situation.

In our municipality, some members of council said, "There's no point in our making bylaws because they will just be overridden, so there's no point in us dealing with the situation," and they throw up their hands. They are faced with the possibility, as in Puslinch, of a very powerful group coming in and forcing them into spending \$250,000 on another Ontario Municipal Board case. That is what they are afraid of.

Bylaws should stand and should be upheld by the act if they are more restrictive addressing a local situation; if they are less restrictive, then the act should stand.

Mr. Sola: Further on you made some allegations or a statement that the minister could be in the hands of the industry, depending on his background before he assumes the post of minister. I am wondering, who do you think should have the leeway in a situation like this? Do you not think the final say should be at the higher level of government rather than the lower?

Mr. B. Hope: My feeling is that if the Legislature, which represents all the people, frames legislation and then the minister, in his discretion, feels that further restrictions are required in a particular case, he should have that discretion, but he should not be able to relieve conditions or site plans to allow a particular licensee or proponent out of the restrictions placed by the Legislature, and I think they should be by the Legislature, not by regulation.

Mr. Ballinger: Can I put something in here?

Mr. Chairman: It is going to have to be fast, because we are over the time already and Mr. Pollock is waiting.

Mr. Ballinger: I just want to respond. I come from Uxbridge. We sort of led the way in many respects with the industry, in battles and in working together, a 15-year history including the Supreme Court of Canada.

One of the problems with this that I see, quite frankly, even as a former mayor, is that in certain areas in Ontario the development agreements are so restrictive that the intent of the agreement is for the aggregate never to be extracted anyway. There is a real conflict there, because some municipalities made it so restrictive that in fact their every intent was to make sure there was no extraction and the resource would never be mined.

Mr. B. Hope: What would be the feeling of the committee if someone applied for a licence to extract gravel immediately to the south of this building? Would that be appropriate or would that be something that Toronto could restrict? You can have a town north of the north boundary of Steeles Avenue, but you cannot have one south. That is the difference between two municipalities, Toronto and Vaughan.

I think that can be appropriate. In some municipalities it may not be appropriate to extract.

Mr. Ballinger: Save and except we are speaking of a nonrenewable resource.

Mr. Wildman: There is lots of gravel under the ground in downtown Toronto, but we are not extracting it.

Mr. B. Hope: Christie Pits used to be a gravel pit.

Mr. Chairman: I do not think we are going to finish this today.

Mr. Ballinger: I know. I just wanted to get in, Mr. Chairman.

Mr. Chairman: I understand you have accomplished what you set out to do. Now let somebody else do it.

Mr. Pollock: I can appreciate your concerns with building a school in the area in which it was, and where do we go from here in a situation like this.

I had a similar situation of a person wanting to open a mine in cottage country. Finally, the municipality came up with this theory that he would only mine that when it was not the cottage season; in other words, in September, October and November, that sort of thing. Has there been any approach along that line?

Mr. B. Hope: Yes, that was one of our original approaches, and the proponent said that was not possible. It could not be restricted to the season when the school was not in use. That was one of our original requests, "Let's at least try that," and that was turned down flat.

Mr. Pollock: I see. I was a little concerned about your generalization that we are shipping aggregates to the United States and might be shipping them to England. As I mentioned here once before, I have a lot of trap rock in my area and we would be glad to get rid of it. It would cause some employment, but it is my understanding it would be too costly to truck that to Toronto. It is approximately 190 kilometres away.

Mr. B. Hope: I am simply quoting from the Globe and Mail.

Mr. Pollock: I see. I understood they were going to ship some aggregates to England from Newfoundland, which no doubt has a generous supply, but not from southern Ontario.

Mr. B. Hope: I am simply quoting something I have read in the paper. I guess we have all had experience with the press. I will not take it any further than that, but there was a long story about the concrete and cement.

Mr. Ballinger: You can get away with that sitting there.

Mr. Chairman: I would like to thank you very much for your presentation and for bringing us up to date on the Mulmur-Mono school. I can go historically into the educational reasons for all of this for a moment, but I will not.

Mr. Wildman: It has certainly been an education for the local ratepayers.

Mr. Chairman: I have one bookkeeping item to do before we adjourn for the day. I would like to read into the record that there is a letter for consideration by the committee from the Ontario Hot-Mix Producers Association, a second one from the Ready Mixed Concrete Association of Ontario and a third



one from the Ontario Sewer and Watermain Contractors Association. I have been asked to bring these to the attention of each committee member. If you did not receive a copy, they are available.

Unless there is further input by any member of the committee, we stand adjourned until tomorrow at 10 o'clock.

The committee adjourned at 4:17 p.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

THURSDAY, MARCH 30, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Township of Thurlow:

Beer, George, Reeve

King, Gary, Senior Planner

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

From the Caledon Ratepayers' Association:

Hughes, David, Director

From the Eagle Ecology Awareness Group—Landscape and Environment:

Gori, Guiseppe, Chairman

Individual Presentation:

Salmond, Eric

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, March 30, 1989

The committee met at 10:15 a.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: Unless there is some objection from members of the committee, I plan to proceed. Our first delegation this morning is from the township of Thurlow. I would like to introduce George Beer, the reeve, to you. I would ask George to introduce his colleagues to us. The ground rules are that there are up to 30 minutes for your presentation. If you leave some time in that 30 minutes for questioning, the committee usually uses it up, but how you use the 30 minutes is up to you.

Reeve Beer: I think we can stay within those ground rules quite easily.

Mr. Ballinger: It is not necessary to stand.

Reeve Beer: Not necessary to stand?

Mr. Chairman: Not necessary. Just rest easy and be comfortable.

TOWNSHIP OF THURLOW

Reeve Beer: My name is George Beer and I am reeve of the township of Thurlow in the county of Hastings. Thank you for the opportunity to meet with you to discuss this important new piece of legislation, Bill 170. The other members of my group are Graydon Pound, councillor; Jim Pine, township administrator; and Gary King, our senior planner.

For those of you who may not know, Thurlow township is adjacent to the city of Belleville on the north and east sides in the county of Hastings. Thurlow is an urbanizing municipality with a population of 7,000. We have a balanced local economy with a good mix of industry, commerce and agriculture.

Thurlow township is extremely interested in the proposed Aggregate Resources Act, since one of the larger licensed Ontario quarries is found in our township. Some of you may know of the Point Anne, Canada Cement Lafarge Ltd. holdings in Thurlow. Approximately 2,000 acres of land are held by Lafarge under licence for the extraction of aggregates.

The maps before you give you an idea of the size, proximity to developed areas and the location of the Lafarge property. As you can see, the holdings represent an area nearly one half the size of the city of Belleville and take in some of the most attractive waterfront land in Ontario. So it is with great interest that we in Thurlow have reviewed the act as it is currently set out.

I give high marks to those who have drafted this legislation, for it



will provide new environmental controls that all communities are coming to expect and will ensure some monetary returns to the municipalities that must service the workforces of these quarries. In our review of the act and in discussions with various government officials, a major concern has appeared that we would like to discuss with you today.

These clauses deal with 500-metre and 300-metre zones, where building and water information will be required prior to the issuance of licences. While the act makes reference to new licences, as I understand it, our concern relates to how the Ministry of Natural Resources, as the lead agency, and the Ministry of the Environment plan to interpret and implement these zones.

1020

As I have already mentioned, the Canada Cement Lafarge property is licensed. Many people in our township are worried that these new zones will be implemented as setbacks. If this occurs, a vast portion of my municipality will be frozen out of any future development opportunities.

I want to say to the committee that should either ministry interpret the new distances as setbacks, Thurlow will be severely affected. Development in the entire southern portion of the township will be lost as a result of this policy. Should MOE and MNR use these sections to implement setbacks, we would have the gravest of concerns.

I would ask then that the committee provide some measure of reassurance that these sections will not be used in this fashion. Thurlow's economic health would be impaired, and we want to continue the strong growth we have seen lately in our community. As members of council, we have been entrusted with the responsibility to work for our citizens and therefore we felt it imperative to raise this issue with you today.

In conclusion, while we are generally supportive of the new bill, we do have some major concern over the implementation and the interpretation of those sections, and trust that they will not become setbacks carved in stone that freeze out development of surrounding lands.

If they are indeed interpreted, implemented and maintained as setbacks, you will have in effect authorized the expropriation of land within the township of Thurlow without any compensation. Clearly, this would not be acceptable in any circumstance. Thank you for the opportunity of speaking to you today.

Mr. Chairman: Thank you. I have Mr. Pollock and Mr. Ballinger on my list, so far, to question you. I would appreciate, because there are four of you, that the questions be directed to Mr. Beer, and if somebody else is answering, please identify that person because everything is on the record here and we have to identify it by source.

Reeve Beer: Sure.

Mr. Pollock: Thank you. Mr. Beer. I want to compliment you on your brief. I appreciate your taking time out of your busy schedule to come here and present a brief to this committee. I am familiar with that area. I used to represent Thurlow, Tyendinaga and that area until they took it away from me back in 1985.

Mr. Ballinger: Rumour has it they have a good representative now.

Mr. Pollock: But anyway, I am familiar with that area because I have campaigned in that area. You are talking about this area right around Point Anne. There are houses on some of that setback area. Is that not right?

Reeve Beer: Within this area, there are a great number of residents. To give you an approximate figure, there could be 500 to 1,000 people who would be affected by a setback like this if it were imposed.

Mr. Pollock: Maybe somebody could fill me in. What happens to those houses if they enforce the setback? What is their status?

Mr. Wildman: They would be a nonconforming use. They would hope nothing would happen to them.

Mr. Chairman: As chair, could I suggest that we maybe call a ministry expert to comment on what kind of interpretation might be current and whether these fears are real or imagined.

Reeve Beer: Before you do, could I refer everyone on the committee—I think they have the maps—to turn to that map. It would give them a good feel for this area.

Mr. Chairman: I will ask Mr. Scott from the ministry to comment on this concern.

Mr. Scott: The intent in the legislation was not to cover it in the way you are thinking. The intent is that when a new application is made, we would look at that zone around the proposed application is made we would look at that zone around the proposed application and use those setbacks—they are not really setbacks—that zone of influence as one of the criteria to judge whether it is acceptable for that application to go forward in licensing.

They would have to show where all the water wells are within the particular zone of influence. They would have to show where all the houses are, where all the barns are, what types of crops are on the land in that area, whether there was forest in that area and anything of that nature covered under the legislation.

It is meant as a means of getting as much information as possible that could be used in the planning process for whether a pit or quarry should go forward in a given area. It is not meant that through legislation we would be zoning property or sterilizing property around that particular deposit or that particular bounded property. That is actually a planning matter and this legislation is a regulatory mechanism, not a planning mechanism per se.

Mr. Chairman: Have you any further questions, Reeve Beer or any of your party, of Mr. Scott?

Reeve Beer: I think what I will do is refer it to our senior planner who can propose some questions that we have at this stage.

Mr. Chairman: Your senior planner is?

Reeve Beer: Gary King.



Mr. King: Thank you, Mr. Chairman. Could I engage in conversation or question Mr. Scott?

Mr. Chairman: That is fine.

Mr. King: It is our understanding that the zone of influence, the 300-metre and 500-metre distance references in the proposed legislation, is for the purpose of gathering information to determine the impacts or any potential impacts of a new pit or quarry.

But in a reciprocal manner, any proposed developments on the periphery of that licensed area, if they are within the 300-metre or 500-metre buffer, are not so much a concern from perhaps the point of view of the Ministry of Natural Resources when reviewing an application for a new licence, but from that of the Ministry of the Environment and its concerns over a draw-down of water. Our concern is that when you have proposals for development adjacent to a pit or quarry, within the 300 or 500 metres, in fact those distances can be used and interpreted as setbacks to freeze out the development.

Mr. Scott: I suppose there is always someone who might try to use that in that way. I am not sure what the Ministry of the Environment's view on that is, but it was not our intent in writing this legislation to cover it in that way. The legislation would give no power to our ministry to have such a planning approach when we are dealing with municipalities on any other type of development. We have our mineral aggregate resource planning policy statement which stands on its own, and that is the document we use for planning purposes. We have no intent and we have no authority under the proposed Aggregate Resources Act to use it as a planning document to restrict other types of development in Ontario.

Mr. King: There was reference made at the aggregate producers' seminar quite some time ago referring to this 300- and/or 500-metre distance as being a setback, so the concern generated from there initially. But more to the point, any regulations that would result from the new legislation are of concern to us as well. While 300 and 500 metres are not specifically referred to as setbacks in Bill 170, if regulations were to result from the act, they might or might not have planning and land use implications. That was our primary concern.

Mr. Scott: It is not our intent to create regulations that would restrict planning development in proximity to pits or quarries under this legislation. The 300- and 500-foot influence zones were derived in negotiations with the Ministry of the Environment. To the best of our knowledge, their intent and certainly our intent was that we would have basically a zone or an area around a proposed application so we could get as much information as possible about what was around there and so our minister, in making a decision, or the Ontario Municipal Board when it is reviewing it, would have that information before it in a manner that was acceptable to everybody.

They would then be able to make a reasonable and valid decision on an individual application basis. It was not meant to be taken beyond that into the planning process for other developments.

1030

Mr. Pollock: Just as a point of quick clarification, are you referring to 500 or 300 feet? It says "metres" here.

Mr. Scott: I am sorry; metres. You are right.

Mr. Pollock: It is quite a little difference.

Mr. Chairman: I would like to thank you for picking that up, Mr. Pollock, because I think Mr. Scott did say "feet" when he was talking about it. It is definitely "metres" in the submission.

Mr. Ballinger: He is from the old school.

Mr. Pollock: It is my understanding, though, that right at the present time Lafarge is just holding this property. They are not planning any quarrying on that particular piece of property. Is that not right?

Reeve Beer: At the present time, there is very limited quarrying going on there. I think what I would like Mr. Pine to do is point out on this large map for the committee so you can realize the magnitude of this licensed area. It is the licensed area as well as the regulations that we are dealing with that we would like to emphasize to this committee. There are some 1,800 acres there, and everything which is in blue, as pointed out by Mr. Pine, is what is presently licensed.

To go back in history with this, as well, it was the former Canada Cement plant at Point Anne, which was torn down and taken out of operation—probably Jim Pine will remember as well as I do—about 1974 or 1976; in that era. That operation was for making cement and the quarrying operation was to supply that facility.

Also, I will refer to a section in the second concession of Thurlow which is licensed north of Highway 2 and is part of this parcel. That land was meant for stripping of clay to use in the making of the cement, but now we understand, with the licence being on there since 1974, that Canada Cement or Standard Aggregates, which is utilizing it from Canada Cement Lafarge, intends in the long term to keep that land frozen, whether it is 500 years or 100 years.

They can give us no criteria of how much they are going to take out. The licence calls for something like 3.3 million tonnes per year. They give us no range of how long they are going to take, whether it is going to take 50 years, 100 years or 500 years, yet this complete area that is licensed is actually frozen. Now we are concerned with this 500-metre setback. To put that outside, we are going to be talking in the neighbourhood of 4,000 to 5,000 acres of the township that is going to be affected by these limitations.

It is just the interpretation of this other setback. I know as a municipality we are going to pursue this licence and see if we cannot get something reviewed through the ministry, but it is not realistic. Jim knows the magnitude because he has walked it. It is literally about two concessions of a township that are taken out of total use.

Anyway, what we are representing to you today is the setback or the scope of the 500 metres, how it is going to affect us and our particular problem, because the area was originally designed and licensed for a plant for



making cement. Now they say they are going to take aggregate out and boat it all over Canada and maybe into the United States.

We do not know what the life expectancy of that area is. We are speaking of some of the Bay of Quinte, which is excellent frontage. We have a proposal there now for about a \$20-million project. At this stage Canada Cement will not even talk to us about getting a road through, because this is part of the scope we are dealing with here.

We have another development on Highway 2 that is adjacent to land which I do not think will be quarried in the next 200 years, yet we are still restricted there because we are getting comments from the licence. Really, it is part of a setback that is there now at the 150 metres. It is very serious for our municipality.

Mr. Ballinger: Reeve, you mentioned the specific site and it is documented on the map. Are there any other operations within your township?

Reeve Beer: We have a number of other gravel deposits. As well, I know of three other aggregate crushing operations within our township.

Mr. Ballinger: Are they licensed as well?

Reeve Beer: They are licensed, but of very small magnitude. You are only talking a few acres in each one of these.

Mr. Ballinger: How many thousands of tons would that be, roughly?

Reeve Beer: I do not know what their licence covers.

Mr. King: We do not have the licence or tonnage information here with us.

Reeve Beer: But they are presently supplying our local needs without using this particular operation because it has practically been dormant since Canada Cement went out. They took some out but I do not think they had taken the three million tons out in the total period, let alone within a year.

Mr. Ballinger: The main question I had has already been answered by Mr. Scott, just sort of a reconfirmation for you about the intent of the metre setbacks within certain zones. It is interesting that you are really only concerned about this one major operation. Obviously the biggest bone of contention is the size of it.

Reeve Beer: That is right, magnitude.

Mr. Ballinger: And because of the setback proposals within the act, as amended, you are concerned that it may stymie any future development within your municipality.

Reeve Beer: I think we have enough reserves to keep our particular area going, but I think this is looked at as strictly an export location for Standard Aggregates and maybe some for Metro as well.

Mr. Ballinger: One other comment while Mr. Scott is here: We may want to qualify that as it relates to the intent of the proposal in the act, as amended, so that folks here from Thurlow township—I do not necessarily mean we have to do it right now, but I think there should be a qualification

with the Ministry of the Environment so that, in fact, you know exactly what the intent of the legislation is.

Mr. Wildman: This will be very brief. From the map it certainly looks like most of the waterfront is taken up.

Reeve Beer: That is what we call the broken front in the township. It is a very valuable waterfront area. It has not developed to this stage. At this stage you could have controlled development through there. As I say, on the westerly point here, if you look at the map on your left-hand side, you will see at the point that that comes out there, we have a proposal within that that is outside of the licensed area. It is about a \$20-million condo project that they have proposed there.

Really, again, all we are asking at this stage is to get a road across their property. They are not even willing to do this. I would say their operation would be less than 20 acres, what has been removed at this time, yet we are sitting on some 18,000 acres. Canada Cement operated there for some 50 years at a massive cement plant. In fact, it was one of the largest in Canada that operated out of there. I would think less than 20 acres has been removed at this time, yet we are looking at a complete 1,800 acres.

Mr. Wildman: Can you give me some idea of where the actual quarry is?

Reeve Beer: Yes, the black mark and the one right in the centre, which is marked M2—that circular, egg-shaped one, right in the centre at the bottom within the licensed area. It is marked M2 right below the spot that says H.

Mr. Wildman: The rest of it, then, is just frozen?

Reeve Beer: It is reserved, yes.

Mr. Wildman: Then I can see on this map where the point is that you were talking about. You have not had any information from the company at all as to what their plans are?

Reeve Beer: Again, yes, we have had a meeting with the president and the representative from the Ministry of Natural Resources and our solicitor. We discussed it with them, but the answer is: "No, we've got the licence on that. That's our reserve towards residential or anything around every home we put there. We'll create problems if we want it in 10 years or 100 years or 500 years; it's creating problems for us down the road."

However, they forget that we have problems right now, that people own that and that is their livelihood. We need some action. I guess what we are going to do in the future is take a look at the area and see what the area will yield. We will have a geologist or somebody come in and see what the area will yield, X number of tons per year. What is the lifetime of that area? I would think it is a time when certainly none of us will have to worry about it.

1040

Mr. Wildman: If there were a review every four years with municipal input, would that in any way assist you?

Reeve Beer: It very much would, because if I again take you back in history, and I served in council at that time in 1974 when the act was changed



and the licensing was put into effect, I can remember at the time that the licence was brought in, if it was not at the 12th hour it was very close to it when the final moment came and there was very limited mapping, descriptions or anything else. In fact, I do not think I had seen a map until recently of the area that was actually licensed.

It was put before council and council said, "Well, we have no objections." They had known this as a cement plant and a place for removing clay in the broken front; they were getting some rock out. They looked at the area and they said: "Okay, there are only X acres that have been extracted at this time. It is not going to affect us in our lifetime, but as we go along we will have to have new rules and new regulations, and this is where we are at this stage. The regulations are coming in, and we realize how much it is going to affect us in the next 50 years."

It is affecting us right now, because we have two major proposals that right now the Ministry of Natural Resources is just going to put a stop to it, and this could affect us more.

Mr. Chairman: I have a final question from Mr. Faubert.

Mr. Faubert: I will be brief. On your zoning map—this is from the county of Hastings planning department—is the whole licensed area zoned for its end use? How is it zoned?

Reeve Beer: I will let Mr. King answer that. He has another map there.

Mr. King: The entire land holding owned by Canada Cement Lafarge is not currently licensed, but approximately 1,800 acres is licensed.

Mr. Faubert: How is it zoned?

Mr. King: It is zoned M2.

Mr. Faubert: It is zoned M2 with your industrial?

Mr. King: Extractive industrial zoning M2.

Mr. Faubert: What is the rest of it zoned as?

Mr. King: Around the periphery it would be rural and some prime agricultural, but if you are familiar with the territory at all, it is mostly rock with very limited overburden capable of being utilized for agriculture.

Mr. Faubert: That is what the holding is.

Mr. King: That is right. Again, it is on Point Anne, tree-covered or vacant rural lands.

Mr. McLean: Do you have to rezone that? Can you not take it out of the zoning M2?

Mr. King: First, as you may know, aggregate producers go to extreme lengths to get the official plan designations and zonings in place, and once they are in place, they are protected not only by the aggregate producers but by the Ministry of Natural Resources. It would be very difficult to change the zoning without having to deal with licence issues and official plan designations. It is unlikely that you would ever get it changed.

Mr. McLean: If you had the support of the ministry.

Mr. King: If you did, but I could say with some certainty that we do not at this point in time, based on conversations we have had in the preceding months.

Mr. Wildman: Also, this bill would limit further municipal input.

Mr. King: That is right.

Reeve Beer: If I could just answer the supplementary here as well, in our meeting with the ministry and Canada Cement Lafarge, or Standard Aggregates, which is the extractive company, in our discussions this was exactly the question we posed, how we could utilize that area under the present zoning or what we could bring in. The only indication they gave us at that time that we could do anything was that there may be some type of industry which we could permit to come in, and that was well said, because at the present time they are trying to establish a dredging maintenance company on the site, towards Highway 2 and north of the broken front into the second concession. We are very limited there.

Mr. McLean: But this bill, Bill 170, gives the minister all kinds of power to do things. Why could the minister not have the power to deem it out of registration if he wanted to?

Reeve Beer: I think that is our next step. We will be dealing directly with the ministry and trying to go in that light, but what we are concerned about in this committee is the scope that is within this that you are dealing with. We are very concerned with that scope.

I appreciate your thoughts on the magnitude of this holding, and I think we would like your support when we go to the minister to represent it this way, because it is not realistic. I think I can truthfully say that. This licence is, I think, the largest in Ontario or close to it, and there is no justification. Generally you have to have a cost benefit there, but none is given in this instance.

Mr. Chairman: I think this would be a good time to say thank you very much on behalf of the committee, George, for you and your group coming before us this morning. There is another group waiting to present, so thank you very much.

Reeve Beer: Once again, I want to thank the committee for its consideration. Thank you.

Mr. Chairman: Our second group of presenters this morning is the Caledon Ratepayers' Association. According to the agenda, David Hughes is the director, Julia Ryan, the legal counsel, and Vincent Colucci, the assistant director, will be approaching the table.

The only ground rule, David, is that you have 30 minutes for your presentation. You can use all of the 30 minutes for the presentation or you could leave some time for questioning at the end, but I have to be fairly strict with the time limit because we do have people scheduled to meet with us until 2:30 this afternoon.

#### CALEDON RATEPAYERS' ASSOCIATION

Mr. Hughes: I understand that, Mr. Chairman. Certainly we look



forward to you having some questions and a good discussion. I have a short presentation which I would like to make in just a moment, if I could.

Perhaps if I distributed the copies of the statement I was going to—

Mr. Chairman: My information was that your preference was to do that at the end of the presentation, but if would like to do that, we will have the clerk do that for you, if you do not mind.

Mr. Hughes: I prefer to, but I defer to esteemed legal counsel, so I would be happy to do that.

Mr. Ballinger: At \$300 an hour.

Mr. Chairman: You could begin, David. We are used to getting up to speed on finding out where you are in these presentations.

Mr. Hughes: Fair enough, Mr. Chairman. I would like to thank the committee for the opportunity to be here today and present our point of view on wayside pits and policy for them in the province.

We are pleased to have the opportunity of appearing before you today to outline our comments and concerns on the proposed Aggregate Resources Act.

The Caledon Ratepayers' Association has been involved in issues relating to aggregate extraction for many years. Within the last two years, we have been actively involved in issues relating to wayside pits. Our concern in this area was precipitated by a proposal by the Ministry of Transportation to include three proposed wayside pit sites east of First Line East, Caledon, as part of its proposed aggregate sources list for 1987.

First Line East is a historical boundary, recognized in our official plan, which has separated the intensive aggregate extractive area along the Highway 10 corridor from those areas to the east.

When we began to research the three proposed wayside pits, we found to our surprise and, indeed, concern that regulation 469/85, passed under the Niagara Escarpment Planning and Development Act, exempts ministries of the crown from the requirement of obtaining a development permit from the Niagara Escarpment Commission for wayside pits used for highway construction purposes.

It was a shock to us that in the Niagara Escarpment planning area, one of the most significant conservation and environmentally sensitive areas in the province, an ordinary citizen is required to obtain a development permit from the commission for building a simple garden shed on his or her front lawn, but no development permit is required for a crown agency in order to open a wayside pit on the escarpment.

In a resolution which you recently introduced into the Legislature and which was adopted by members of the Legislature, you referred to, and I quote, "the importance of the Niagara Escarpment as a significant feature of Ontario's natural heritage," and "heritage and environmental concerns [being] priorities when considering land use planning within the Niagara Escarpment boundaries." We wholeheartedly agree with those statements.

We were pleased that, largely through the efforts of our MPP, the

Honourable Mavis Wilson—incidentally, she has staff representation here today, and we are very delighted to have that here today. I understand Mrs. Wilson is unfortunately out of town on prior commitments. We were pleased that Mrs. Wilson was able to bring about one of the amendments that was proposed by the Honourable Vincent Kerrio to section 27 of Bill 170, which will now require ministries of the crown to obtain development permits for wayside pits within the Niagara Escarpment planning area. We strongly support that amendment and we look forward to its implementation.

However, while we are very pleased that this particular amendment has been proposed, we remain concerned about certain other provisions in the proposed Aggregate Resources Act relating to wayside pits. As the committee is no doubt aware, under the existing Pits and Quarries Control Act, wayside pits are defined to be "temporary" in section 1 of that act. In section 12 of that act, wayside permits may not be issued unless the minister is satisfied that the issuance of a permit would cause "only a temporary inconvenience to the public."

We are deeply concerned that the proposed Aggregate Resources Act does not clearly require wayside pits to be temporary. We read with interest the minister's statement in introducing the proposed amendments to the bill and note his very clear statement that "The purpose and use of wayside permits has been more clearly defined to ensure their temporary nature." However, upon reading the proposed legislation, it does not appear that the minister's stated intent has been reflected in the amendments proposed.

Let's take a look at the amendments proposed to section 23. Subsection 23(1) specifies that a wayside permit may be applied for "for a temporary project." However, nowhere in that section or elsewhere in the proposed act is the wayside pit itself required to be temporary. Let's be very clear on this vital point. There is a great difference between saying that a wayside pit provides gravel for a temporary project and requiring the pit itself to be temporary.

Under this proposed bill, a wayside pit could serve a different temporary project each year for five, 10 or 20 years and thus become a long-term operation. In our view, wayside pits are not intended to provide long-term progressive extraction. The legislation should make it clear that wayside pits are required to be temporary as is the existing requirement in and under the Pits and Quarries Control Act.

The next issue which concerns us relates to the regulations under this bill. The minister stated in his statement to the House in introducing the proposed amendments, "The bill will require further limitations to be detailed in regulations to ensure appropriate use of wayside permits by controlling both sequential use of a site and multiple applications for adjacent sites."

Sequential use of a site—for example, five acres of a 100-acre site by means of a wayside permit this year, then the adjacent five acres by way of a wayside permit next year and so on—is one way by which wayside pits become long-term operations. We agree with the minister that further limitations on waysides by controlling sequential permits are necessary.

However, we believe the appropriate place for placing appropriate controls on sequential permits is in the bill and not, and I repeat not, in waiting for the regulations. Regulations are not required to be subject to public consultation or else to public review. The minister has stated that further limitations are appropriate. We believe that it is appropriate to deal with this issue now in the bill.



The legislation should clearly specify that sequential permits for a site are not permitted. In addition, we believe that the act should limit the number of renewals of a wayside permit to provide that one is not entitled to more than one renewal on a site. Wayside permits are not intended to result in long-term progressive extraction and the bill should make this abundantly clear.

We are also concerned about the failure of Bill 170 to specify maximum tonnage limits for wayside pits. Section 30 provides that in the issuance of a wayside permit, conditions may be imposed to limit the proposed quantity of aggregate to be removed. It is our view that the act should also set out maximum tonnage limits to be provided by way of wayside permits from a site. We believe 100,000 tonnes is the appropriate maximum tonnage limit for a site.

In summary, we believe that Bill 170 should be further amended to: first, clearly specify that wayside pits are required to be temporary; second, place limitations on sequential use of a site; third, limit the number of renewals for a wayside permit; and, fourth, place maximum tonnage limits on extraction by way of wayside permit from a given site.

We have attached to our brief proposed amendments to Bill 170 which address our concerns. We would respectfully request that the committee consider these proposed amendments in its deliberations and recommend them for inclusion in third reading.

We thank you for the opportunity to address you today and we will be pleased to answer any questions you may have relating to our presentation.

Mr. Wildman: I want to compliment you on your brief and on its targeting of one particular serious problem, the chaos we have experienced with the administration of wayside pits in this province.

I notice that on page 2 you quote the minister and the previous bill, the bill that is now currently in effect, the Pits and Quarries Control Act, and the argument over whether it should be a temporary site or a temporary project for which the site is used. I think that is crucial.

The problem with this legislation as it is presented and the amendments, is that section 23, as I understand it, basically still allows for wayside pit permits for both road construction and maintenance of so-called urgent projects. It seems to me, as you have indicated, that if a particular site is going to be used over and over, such as the experience they had in Erin township with one so-called wayside site renewed 24 times, it should be applying for a licence as a permanent pit project or an ongoing pit project.

Do you have examples in your area of sequential use? You give the hypothetical case of a 100-acre site: five acres are used one year and then the next year they apply for a wayside operation for an adjacent five acres and so on; so in fact, the 100 acres is used over many years with a number of sequential wayside pit operations.

Mr. Hughes: There is at least one example I am aware of, and we could talk about others. There is one which Mavis Wilson, our MPP, has been very clear about—and we really appreciate her concern—the Regan-Graham area in Caledon, which started off wayside, received a number of permits and ultimately became a licensed property. We just feel that if a given property will not truly be temporary, then, to put it simply, there should be honesty about what is likely to happen to a property and therefore proceed

accordingly. There is a well-established procedure for that.

One example I can point to in Caledon would be the Regan-Graham experience, which is a matter of fact. Beyond that, I could point to one of the proposals I referred to, for example, east of the First Line East in Caledon. On the Fourth Line East, for example, I think the ministry proposed what the Niagara Escarpment Commission found was 80 acres ultimately over 10 to 15 years of progressive extraction on a temporary basis. The first year would have been 500,000 tonnes temporary, and the Niagara Escarpment Commission voted that this would be contrary to the policies and objectives of the Niagara Escarpment plan. This also would have been contrary to the approved official plan of Caledon, not to mention the approved zoning bylaw of the township of Caledon.

Mr. Wildman: Are you aware that the amendments proposed to this legislation would make it more difficult for municipalities, if they wished—Actually, it would make it impossible for a municipality to pass restrictions on aggregate operations that are more stringent than those that are in the act.

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Mr. Hughes: On that precise question, I am not fully aware. I could have our counsel at some point speak with yours. Basically, on a general level, we are concerned about ministerial discretion in the bill. Just to wayside pits, the experience we have had in Caledon for over two years now has given us quite a bit of insight to this area of aggregate resources. Beyond that, I think there has been a philosophy expressed of concern for local government and local options, if you will, and I think anything we can do to foster that is beneficial.

Mr. Wildman: I appreciate the fact that you are directing it at wayside pits. I just raised that one because of your comments regarding zoning.

Mr. Hughes: Certainly in what is known as the township of Caledon, the zoning bylaw between First Line East and Airport Road specifically, on a property-by-property basis, does prohibit sand and gravel pits from existing. It stands to reason to us that when you go through the process and expense and effort to establish zoning bylaws and so on—I mean, they have a certain logic to them and a certain amount of work went into them. There are more straightforward and legitimate means to deal with them, I would say, personally speaking.

Mr. Wildman: Mr. Chairman, I just want to again thank the delegation, particularly for the preparation of proposed amendments in the appendix. I hope the committee will consider the amendments very carefully in dealing with this bill in clause-by-clause.

Mr. Hughes: Thank you very much.

Mr. Chairman: Mr. Hughes was good enough to call on the phone a couple of times, and one of the suggestions the chairman made was that kind of input would be most helpful to the committee.

Mr. Hughes: I appreciate that.

Mr. Chairman: Thank you very much for that observation, Mr. Wildman.  
Mr. McLean.



Mr. Ballinger: Very astute chairman.

Mr. McLean: Do you have a copy of the amendments?

Mr. Hughes: I am sorry?

Mr. McLean: When did you get a copy of the amendments?

Mr. Hughes: There are sort of two answers to this. First, this has been ongoing for a long time, and we have had a lot of problems, quite frankly, dealing with certain ministries over these times. I could relate certain incidents, but I do not think it is necessary at this point to do that.

I am quite aware that you have to be very persistent in obtaining them. I did not know that second reading was being read on the day it was, but as soon as I heard it was, I made sure that I got a copy of the amendments that were tabled.

Mr. McLean: Have you got a copy of the last 45? That was last week.

Mr. Hughes: I did receive them formally last week about Wednesday or Thursday, that is correct.

Mr. McLean: Forty-five new amendments to the bill.

Mr. Ballinger: Seventeen.

Mr. McLean: There are 45 amendments.

Mr. Hughes: No, I understood the minister had issued 40.

Mr. Wildman: It was 40; 45 statements.

Mr. Hughes: Right. I received them formally from the Ministry of Natural Resources by Priority Post last Wednesday or Thursday.

Mr. McLean: Right. On the section 27 amendment that you have referred to and the one that you are recommending—and when I looked at the section 27 amendment, I felt that the amendment was in order with regard to the amount that may be extracted. You are setting a limit of 100,000 tonnes, but the amendment indicates that when they make their site plan and request the wayside permit, the tonnage would be set at that time.

What if you had, as your amendment says, a 100,000 tonne maximum? Would they have to then go back if the project needed 200,000 or 300,000 tonnes? The amendment, as it is in the ministry, sets it out that they would set that amount when that project is tendered for. They would know how much tonnage.

Mr. Hughes: To answer your question, I would say that if more than 100,000 tonnes is coming out of a location, in excess of that, we would regard that as a benchmark for what is or is not temporary. Therefore, if it was going to be, in your example, 100,000 and 200,000 or 300,000 more, you are getting up. I think it is fair to say that this does not have all the trappings of a temporary operation and therefore, by all means, I think the proposal should proceed on that basis. In other words, probably a licence should be applied for.

There are 4,000 acres, for example, licensed in Caledon right now, for

example, so it is not impossible to obtain licences.

Mr. McLean: Do you feel that there should be an environmental assessment done on a wayside pit site?

Mr. Hughes: I certainly would favour that. I know that the government has improved the definition of "environment" to equal the Environmental Protection Act, but—

Mr. Wildman: No, it does not.

Mr. Hughes: Okay. I defer to Mr. Wildman then. I would be happy to hear about this.

I think when you are talking about gravel mining, there is dust and there is noise through the evening. You have children on bikes who do not—I think I have heard sports figures saying that children are not careless, they are carefree. Things like that relate to the operation of the pit, both truck traffic and the actual extraction. Those do have a social dimension to them. On those bases, I personally would have some favour, absolutely, for that approach to looking at gravel mining.

Mr. Faubert: Thank you, Mr. Hughes, and again I would like to compliment you on your brief.

Mr. Hughes: Thank you very much.

Mr. Faubert: It is very thorough and I like the way you have laid out your proposed amendments. I think we can all agree with your statement, "Wayside permits are not intended to result in long-term progressive extraction," because that was a stated intention of the minister on this.

Mr. Hughes: Correct.

Mr. Faubert: But you seem to feel that is not carried through within the legislation itself. Is that correct? Is that your position?

Mr. Hughes: I think if you read section 23, as amended, you will see quite clearly that the requirement is for the project to be temporary and not the pit location. I would say that basically there are some very important issues relating to routing of traffic and these things, and there have been a few problems in Caledon, particularly in the Belfountain area, but having raised those considerations, our primary concern is with the activity of the digging and the mining. Where the gravel will be used and how it will be used really is not a major concern to us.

Having put that proviso, the routing question is very important to people who live very near to gravel pits, but certainly for us the primary thing is the location and the operation being temporary. Clearly, in the present act that is the requirement.

I could say we have had a problem. We have been working towards defining what "temporary" is and we hope that will be a positive result of this bill, but certainly our concern is with the digging and the mining and whether or not it is temporary. When you read section 23, I think you will see that is not required necessarily, as Mr. Wildman mentioned.

Mr. Faubert: I can appreciate your concern and your concern about



the impact, but section 31 does put on a time limit. You are talking about an 18-month time limit. You are further suggesting a quantitative extraction limit be put on it as well as a time limit.

Mr. Hughes: In my brief, you will see that we are happy to—well, not happy, but we live in a real world and we are prepared to permit a renewal, one renewal. If you have 18 months and you get another 18 months, that is three years. If it is going to go on more than three years, I just have a hard time believing that is temporary.

Mr. Faubert: I understand that has been the problem in the past.

Mr. Hughes: That is correct.

Mr. Faubert: There have been continuations. As projects came up, they continued to use the same wayside pit.

Mr. Hughes: Precisely. We are not saying no gravel. We are over six million tonnes in Caledon. The latest annual figures have us up 23 per cent on an annual basis. It is important to remember that aggregate, number one, is nonrenewable, and second, is not subject to inflation, so 23 per cent is a real increase.

We are absolutely not saying no gravel, we are saying that if the digging is going to occur in a nontemporary manner, then let's be honest about it and proceed accordingly.

Mr. Faubert: Okay. I have just one final question and it is a supplementary to Mr. McLean's question. How did you arrive at the 100,000 tonne figure? If it is issued per project, the project in itself would determine the extraction or the amount to be extracted. I just wonder how you put the limit at 100,000 tonnes.

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Mr. Hughes: I think I could answer by two means. One is that we could reference the history of wayside pit operations in the province and we could look at traditionally—and we are going back historically a long way—what volumes have been taken out on a wayside basis and what purposes had been used for wayside purposes.

Now I am moving to numbers other than historical numbers, which, I think, will give you a lot of information as to what the waysides have been traditionally and therefore what they should continue to be. In the Niagara Escarpment plan, originally, there was a limit proposed there of 20,000 tonnes. Having made the point about inflation, we are prepared to be realistic and we think 100,000 tonnes is a fair amount of gravel. If someone is saying that in fact this is a temporary operation, then we feel 100,000 tonnes is—and we know a lot about gravel up in Caledon—

Mr. Faubert: You live with it every day.

Mr. Hughes: Yes, and we are very proud to provide the province with a lot of aggregate, and Metropolitan Toronto, as well. We do that with a lot of pride. We try to do it in a way that minimizes the impact on our lives and still provides gravel for the province. We feel that if it is over 100,000 tonnes, in all probability that location probably will not be temporary, and therefore, as I say, let's be honest and let's apply for licences. There are

4,000 acres licensed and ready to go right now in Caledon. So we have lots of gravel.

Mr. Faubert: But the issue is really that is a cap to assure the temporary aspects?

Mr. Hughes: Yes. For example, I refer to the proposed pit 1987 on Fourth Line East in Caledon. Quite apart from being against the policies of the Niagara Escarpment plan, our official plan and zoning bylaws and so on, the first year, they were proposing 500,000 tonnes coming out of that pit on a gravel road on a temporary basis, and then it would have been held 10 to 15 years by the Niagara Escarpment Commission. We just have to define what it is. That has been the problem in terms of what is temporary: it just has not been defined, and inflation has been occurring. I think it is important to call it straight and honest. If it is going to be 500,000 tonnes the first year in 10 or 15 years, let's address it as not being temporary and take it from there.

Mr. Chairman: In recognizing Mr. Ballinger, I would like to remind him that we have about three minutes.

Mr. Ballinger: Thank you, Mr. Chairman. I really do not have any specific questions. I want to make a couple of points. I am from Uxbridge. I, too, know a lot about gravel. Milton, Caledon, and Uxbridge are currently the three top-producers in the whole province of Ontario in terms of licensed operations.

First of all, I want to congratulate you on the concise manner of the amendments that are before us. But I want to respond with respect to what Mr. McLean said on behalf of the government. One of the problems we have, especially as government members, is that we are darned if we do and we are darned if we do not. We received all kinds of submissions to Bill 170 after first reading.

As a member of the government, and as the parliamentary assistant to the minister, I participated in many discussions, evolving around bringing the bill currently before us for second reading with some amendments. You run the risk if you do not make any amendments. Some of the deputants say: "You did not listen to us. You did not pay any attention." So, consequently we brought in second reading without any amendments. I suggest to you that the amendment on the development permit included in the Niagara Escarpment Commission, you are absolutely right, thanks to your own member—

Mr. Hughes: Absolutely.

Mr. Ballinger: —our own people in the Ministry of Natural Resources in the discussion, the minister's staff and the minister himself trying to accommodate as many of those areas that have been drastically affected, and Caledon is one. One of the conflicts that MNR has, of course, with wayside pits relates to another arm of the government, the Ministry of Transportation. There is always that conflict between provincial need and local need. Wayside pits, I can tell you, coming from my own community in Uxbridge, have many times been a thorn in our side. We believe that over the past years there has been much progress made, in terms of the communication between the local municipality and the province, prior to the issuance of a wayside pit.

In this particular case, I personally would have some difficulty with tonnage limits. I think there are many parts of the amendment that we can look at in a very serious vein as a committee, but the trouble I see with tonnage



limits is when you have a specific road project. Let's use Highway 410 as an example. The tough thing, as far as MTO is concerned, about trying to construct as many miles of roads in Ontario as possible with the budget constraints it has is that when you take a situation where you have a 100,000-tonne cap, for example, and the road project may be one-million tonnes, if in fact the ministry makes available all the available sources and on wayside pits there is a cap in a specific area of 100,000, you start asking yourself where the other source is going to come from and what effect that has on the provincial budget in that particular ministry, which happens to be Transportation, versus the local need and the concerns about the impact it has on the local community.

Legislation like this, from the government's point of view, becomes very tough because what you try to do is find the middle ground. That is exactly what we are attempting to do. This legislation has been around. I was one of the original members on the working party appointed by the Association of Municipalities of Ontario in 1973. We travelled the province and we went through this exercise in communities all across Ontario.

I say, with the greatest of respect, that 15 years later we still do not have the legislation. I think we are on the right track here. There is no question that we can look at some areas in which people have some genuine concerns. But we have come a long way. I am really proud to be a member of a government that has the legislation currently before us because it has been a long time coming.

Mr. Chairman: I am going to request, David, that you react to that final comment.

Mr. Hughes: There are three points I would like to make, just briefly.

Mr. Chairman: Please be very brief because we are over time.

Mr. Hughes: That is my middle name. On the first point, in terms of middle ground and having come a long way and whatever, instead of dealing on such a general level, I think you have to look at what is in the proposed bill and what the proposed amendments were. I think that development permits are a very positive development by Mavis Wilson. I am sure the chairman and others were involved in that.

But there are still some problems. "Temporary" is not defined in the act. If wayside pits are not defined as temporary in the bill as passed, this will be a major step backwards, first, in terms of honesty in government and second, in terms of concern for the environment. You talk about the budget and balancing and that sort of thing. I think it is a question of honesty. More important, is a pit only going to be temporary or not? If it is not, then we can license and we can build from licences. It is all gravel.

But it is a question of honesty really. If a pit is going to be 500,000 tonnes, let's say, as a real example in that case up in Caledon, and it is going to go 10 or 15 years, that is not temporary. Let's be honest about it and apply for a licence.

So I think we can build the roads, I think we can protect the environment and I think we can be honest. I do agree that the development permits are an important improvement, but I think there are some important improvements that must be made before this bill is approved by the general community out there, not simply certain road builders' associations and so on.

Finally, on the point of municipalities, as the chairman would know, the AMO is not exactly 100 per cent solid. There are certain municipalities which are very concerned about this bill. There is a quite a consensus that there are some problems in the bill still, and we hope that the committee will work to make wayside pits temporary.

Mr. Wildman: Mr. Chairman—

Mr. Chairman: I think I have to rule you out of order, Bud, because we have other people.

Mr. Wildman: No, I just want a point of clarification here. This is really for the parliamentary assistant, not for the delegation.

Is it correct that the definition of "environment" under the amendments to the bill is, "land, air and water and includes the use, condition and natural features of the site and adjacent lands," whereas the Environmental Protection Act definition is "'natural environment' means the air, land and water, or any combination or part thereof, of the province of Ontario"?

Mr. Hughes: That is a point well taken. If you add Mr. McLean's point on the Environmental Assessment Act, you have further things for the committee to consider.

Mr. Chairman: Take it as a point of information because I think we established this a couple of times already in the hearings.

Thank you very much, David. In thanking you, I would like to thank the people who came into the room with you because I think the committee should realize there is a significant number of people here from the Caledon Ratepayers' Association who are showing a real interest in the effort. The committee members appreciate that kind of interest.

Mr. Hughes: I would just say on behalf of the people here, I know we are delighted to have the opportunity to come before the committee and present our point of view. As you know, we feel quite strongly about our point of view and we have been at it for a long time. On behalf of the people who were unable to be here today—being a workday for most people in Toronto it was difficult for most people to come—I know they appreciate that they had the opportunity to come and they thank you very much.

Mr. Chairman: Thank you.

Our third presentation this morning is by EAGLE, which means the Ecology Awareness Group, Landscape and Environment, Giuseppe Gori, the chairman of that group, is approaching the presentation area. You should all have a handout, which I recognize as a map of his main concern. Carry on. There will be a little bit of background noise for a couple of minutes until they vacate the room.

#### ECOLOGY AWARENESS GROUP, LANDSCAPE AND ENVIRONMENT

Mr. Gori: I would like to thank you, Mr. Chairman and all of you, for having the opportunity of talking to you. Have patience, please.

Our group is a very small group, as you certainly know. We did not have time to prepare a formal presentation. We have not looked through the amendments in detail and that is the reason we do not have any replacement



text to propose. I came here today for one major problem or one major point I want to comment on. However, before doing that, allow me to briefly point out a few problems, I would say, which I may present in the form of questions.

For instance, with the definition of the environment we were just talking about, the definition I see on the proposed amendment, I could say half jokingly, looks like an Aristotelian definition where you have the four basic elements; only fire is missing. Less jokingly, I would say I would be much more precise in what the environment is.

The definition does not include specifically wildlife, animals. It does not include people. It does not include nearby communities, buildings, structures, noise, radiation, gas, all sorts of other things. I would be much more specific. For example, if a particular quarry operation does affect a town, a town is not explicitly suggested there; certainly communities, houses, people nearby, noise and so on. So much for that.

Again, I would present these as comments. I am sure the previous group and the Foundation for Aggregate Studies has commented point by point on many of these things and I do not want to repeat the same sort of questions.

I see one amendment that has to do with section 27, which suggests that the Niagara Escarpment plan should be looked at when licences are issued. My question is: Does that same sort of amendment not also apply to section 13 and section 37? Section 13 is in general talking about licences and section 37 is talking about the issues of aggregate permits.

I have some comments on the amendment about fines. I would rephrase this to be clear that in addition to the fine of \$500 to \$30,000 for each day provided under subsection 58(1), a penalty "shall" be paid—not "may be"—"equal to the amount of the monetary" and so on and so forth. I would be more precise in subsection 2 probably. I do not understand it as it is.

Finally, the last point in these amendments is the amendment to section 70. As it is proposed, if I understand it correctly, that is a noncompliance subclause with zoning bylaws. "The minister may issue a licence in respect of an application under subsection (1) whether or not all relevant zoning bylaws are complied with." I simply do not understand the reasoning whereby such overriding power should be granted to the minister with this section.

Let me come to my main point now. It stands out right from the cover of Bill 170. It is signed by or under the responsibility of the Minister of Natural Resources only. The main point that I came here today to present to you is that there is a conflict of interest. On one side, the Minister of Natural Resources is in charge of developing resources or extracting resources; on the other side, there are problems with the conservation of these resources.

The same kind of conflict exists with a number of other documents or bills, such as the Ontario conservation tax rebate program, which is signed by the Minister of Municipal Affairs and the Minister of Natural Resources, and the new policy statement on wetlands, which is again signed by the same two ministries, and, as you know, the responsibility for the Niagara Escarpment Commission is currently under the Minister of Municipal Affairs and the Minister of Natural Resources.

In all these areas my question is, why is the Minister of the Environment not involved? This kind of organization results in a number of

problems, of which I will mention three. The first problem is that the Niagara Escarpment Commission has no power to protect the environment as is specified in the Niagara Escarpment Planning and Development Act; the second problem is that the current enforcement of the law is not working, and the third problem is that the protection of the Niagara Escarpment is nonexistent.

What we would like to see and what I would like to propose is that Bill 170 be reviewed to include responsibilities for the Minister of the Environment at least as great as, if not greater than, the responsibility that the Minister of Natural Resources currently has. For example, in all the sections that have to do with the granting of licences, they should be reviewed by the Minister of the Environment. Environmental assessments should be conducted for new licences or for the extension of current licences, and the Minister of the Environment should have final approval of these recommendations.

To give you some examples of these three problems that I have mentioned, I would bring up one point here. For example, I was saying the Niagara Escarpment Commission has no power to enforce the act. The example is that the Niagara Escarpment Commission merely recognized existing licences when it prepared its Niagara Escarpment plan. I did not find anybody who could tell me what the reason was.

#### 1130

If you can go to the map that was distributed to you, you can see on the bottom part, lot 22, concession 4, which is described as mineral, and the Niagara Escarpment natural area, and it is partly covering environmentally sensitive areas as described in the regional map. That has never been environmentally assessed and there are no plans to do any environmental assessment on that. You will notice on the map that there are wetlands. There is no buffer between the Niagara Escarpment natural area and this mineral area. We have circulated a petition to ask the Niagara Escarpment Commission for rezoning of these areas.

When I pointed out these kinds of problems through a letter to the chairman of the Niagara Escarpment Commission, this letter was simply forwarded to the Minister of Natural Resources (Mr. Kerrio), not to the Minister of the Environment (Mr. Bradley). That is one of my points.

The other thing is related to the second problem: that the current enforcement of the law is not working. You can again look at the map. On the top part of the page, I have written down some numbers corresponding to quarry operations and wayside pit operations.

First is the United Aggregates quarry, which has already exploited more than 200 acres and is going to expand in approximately another 300 acres for a total of over 500 or 600 acres. Second is the Duff quarry, which is approximately 200 acres. Third is the Bot quarry, which is approximately 100 acres. Fourth is a small flagstone quarry; I would say it is a wayside pit, probably of 20 acres, something of that nature.

Fifth is a new application from Bot. They already have the licences and they have started working on it right now. Sixth is Taro Aggregates, a new company that has started buying properties around the Third Line, which is right in the middle of the Niagara Escarpment natural area. They own something like 600 acres in the area.

Seventh is a new application. It has just been presented for a wayside



pit. I did not put on this map another two wayside pits between the Fourth and Fifth lines north of 17 Side Road. One is accessed from the Fourth Line and one from 17 Side Road.

All this adds up to something like over 1,400 acres of mineral extraction area and this is, as we can notice from the map, just around and over the Niagara Escarpment ridge. All these areas should be protected according to the Niagara Escarpment Planning and Development Act. It is recognized as environmentally sensitive. It is recognized as unique in Canada. All these are nice words, but in practice what happens is that that area is used more for aggregates than any other area I know that is farther away from the escarpment.

It is also nice to point out that since 1985, that is, since the Niagara Escarpment plan was approved, all applications for new pits and quarries have been approved. Again, this may depend on the fact of this conflict of interest, but according to us, the proper position of the Niagara Escarpment Commission should be under the Minister of the Environment.

The last point regarding these problems is that the Niagara Escarpment plan clearly identifies the Niagara Escarpment in general, the 755 kilometres of it, as a special and unique formation in Canada and, as such, should be protected. In reality, what is happening is that specifically in these areas there are quarries and pits, hundreds of them, and many other environmental problems; for example, garbage dumps. All this is to demonstrate that the problems are there.

I do not know how to solve them, and I do not know whom to address. I cannot address the Minister of Natural Resources (Mr. Kerrio) because of this conflict of interest. I would not be here today if my letters and my concerns were not directed to the Minister of Natural Resources. If they were directed to the Minister of the Environment (Mr. Bradley), I would see that there was a balance between, on the one side, conservation, and on the other side, the use of natural resources.

I am here trying to ensure the conservation of the environment, but I have to do it by commenting on amendments to a bill that in fact is for the use of these resources. That is why I am at a loss.

I think this concludes my presentation.

Mr. Chairman: I would like to thank you for coming before the committee. I have recognized, so far, Mr. Faubert and Mr. Wildman for questions. Before I ask Mr. Faubert to question, I would like to welcome you as a constituent as well.

To put this in perspective, Mr. Gori lives on the Fourth Line, which is the one at the upper part of your map that runs between 1 and 7 and 5 and 3. His home is at the corner of the number 1, sort of right at the corner there on the Fourth Line. So, he has been dynamically involved in concerns relative to quarrying and the Niagara Escarpment for a long time. We have had many conversations about where the responsibility should rest with respect to concerns like his own, relative to the Ministry of the Environment and that type of thing.

I am glad you took the time to come to the committee.

The other thing I would like to clarify is that I have tried very

conscientiously as chairman of this committee not to pre-advise any of my local people in any way, because we decided as a group that we would not be advertising. We also decided as a group that people who had a continuing interest would be aware because the ministry would be communicating with them about the deliberations of this committee.

There were 12 environmental groups that came to a rather large meeting in Georgetown. The first reaction for someone like myself, to get their input, would be to invite them to the committee, which in this case, because of the way we structured the hearings, would not be appropriate.

I commend you for being on top of things so that you could get here without my advising you specifically of all the details and things, which was not information that was privy to other people.

Mr. Faubert: Your first clarification answered my second question; that is, what was Mr. Gori's interest? He did not say directly what his interest was here. But if he lives in the middle of all this aggregate extraction, I can understand it. He did not say that in his presentation.

Mr. Gori, EAGLE is a rather unusual name for a group. I just wonder if you can advise the committee what the size of your group is, the makeup of it; are you professionals interested in land reclamation or aggregate extraction, or is it an interest in where you live? Perhaps you could elaborate for us.

Mr. Gori: Thank you for the question. I meant to say that right at the beginning. I said that it was a very small group. The executive is only six or eight people. We have circulated more than one petition. The first one was signed by about 250 people, most of them living in the area south of Acton and east of Georgetown.

Our more active members, these six or eight people, are all living in the area, some of them right on the Third Line, which is surrounded by Taro Aggregates properties, which intends to apply for and exploit mineral resources.

Does this answer your question?

Mr. Faubert: Yes, that answers it. It puts it in perspective. Thank you.

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Mr. Wildman: I understand your concern about conflict of interest, but surely the Ministry of Natural Resources in all of its activities faces conflicting demands on our natural resources from those who are concerned mainly with conservation, those with utilization, some for industrial or resource extraction purposes and others for recreational purposes. To be fair to the ministry, it is a difficult balance to make. I understand your concern and suggestion that perhaps one of the ways of dealing with this would be to give the Ministry of the Environment a greater role or the sole role in relation to the escarpment.

Would you think this bill could be improved if new quarry and aggregate pit operations were subject to environmental assessment?

Mr. Gori: The answer to your question is yes, it could be improved by doing such a thing, but it is probably not enough. I would suggest that it



is mandatory for the Minister of the Environment to be completely knowledgeable of this bill and to be the champion for the conservation part of this bill. I would like to see his signature on the front page of this bill.

For example, when a couple of officials from the Ministry of the Environment came to Georgetown to one of our public meetings, I specifically asked them the question, "What is your relationship with the Niagara Escarpment Commission?" They suggested that they were not aware of the Niagara Escarpment plan. This comment from the Ministry of the Environment—I simply could not believe that situation.

Again, the reason is possibly that the horizontal communication between ministries is obviously not as efficient as the vertical chain of responsibilities. If the Niagara Escarpment Commission were in fact under the responsibility of the Ministry of the Environment, you would avoid such situations.

Mr. Wildman: Have you received the ministry's proposed amendments to this legislation?

Mr. Gori: Yes. We received them yesterday.

Mr. Wildman: Yesterday. Have you had a chance to look at them?

Mr. Gori: As much as I reported under the former questions, because I did not have the time to cross-reference the old text to the new amendments and make sure that everything is consistent. I raised under the former questions the points that I said before—the definition of "environment," the position of when licensing would be subject to the compliance of the Niagara Escarpment Commission, the question of fines and the question on section 70—but at this point our only suggestion is for somebody else with more manpower than us to look at these questions.

Mr. Chairman: Could I interject for a minute on that one, Mr. Wildman? I clarified this once. You may not have been present at the time, but there are about eight to 11 groups and individuals coming before the committee who plugged into the process later than possible. We addressed the issue of anybody who had been working with the ministry on a continuous basis and had requested the information. Specifically, nine umbrella groups and the Erin, Puslinch and Caledon ratepayers' groups were the other three that had made specific requests the day of second reading.

It is my understanding that, through the ministry, we accommodated anybody who requested. I believe Mr. Gori is in one of the group of eight to 11 who got them as soon as he requested them.

Mr. Wildman: I do not know whether this makes him feel any better, but the members of the Legislature only received the amendments the day we went into second reading of the bill.

Mr. Faubert: You got them before we did.

Mr. Wildman: I am concerned about the amendment to section 27 where it does require a development permit under the Niagara Escarpment Planning and Development Act for wayside pits in the escarpment planning area. This would allow the government to make regulations governing and limiting the issuance of wayside pit permits. Does that meet any of your concerns, at least about waysides?

Mr. Gori: That is correct. That is what I tried to say before. It does meet the requirements for wayside pits. Why is not such an amendment proposed also for the aggregate permits and for licences in general? Again, I did not have time to cross-reference the old bill, but I think this would be the only point in which the Niagara Escarpment Commission is even mentioned. I think that is far too little.

Mr. Chairman: Mr. McLean, this will be the last question.

Mr. McLean: I have a very short question. On this map, 1 is the aggregate area of United Aggregates. Across the road is a proposed landfill. What is the status of that proposed landfill? Is it a Halton region landfill site, or what is it?

Mr. Gori: The area in black is actually the area that is currently excavated; it is about 200 acres. There has been a private proposal to use that as a landfill. This private proposal is under review at this point. It has not yet been approved, and we hope it will not be approved.

Mr. McLean: You cannot put a landfill site on a gravel pit. You have to have a clay bottom.

Mr. Chairman: I could perhaps verify that, because there are two groups in that area that are active. The other group is called POWR, Preserve Our Water Resources. Probably you are familiar with the fact that they were down concerning the landfill.

The operation now is a conglomerate. The proposal there is to landfill a large part of the black and at the same time go across the concession road and go into the other area, which would require blasting and a number of other things. POWR specifically has never requested that the aggregate extraction be stopped. What they are concerned about primarily is the landfill concept. The EAGLE group I think goes a step beyond; it is concerned about the aggregate extraction. That is the difference between the two.

Mr. Gori: If I can add to that, the area which is proposed for expansion, which is the area in grey, is actually at the headwaters of three different river basins. It is between an ESA, which I believe is 27 and 28 or 28 and 29 in the regional plan, and it is an area right in between the Niagara Escarpment—

Mr. Wildman: ESA is environmentally sensitive area?

Mr. Gori: Yes, sorry. It is designated as that in the regional plan. Our main concern is actually this expansion that is happening in spite of never having been environmentally assessed, in spite of being in that very sensitive place at the headwaters of three river basins, in spite of being in between natural areas. I could continue for another 10 minutes describing what the problems are there.

When we tried to bring all of these environmental problems and concerns to the Niagara Escarpment Commission, we ended up somehow in this room fighting against a bill which is for the purpose of using natural resources, not primarily for the purpose of conserving the environment.

Mr. Chairman: In thanking you, Mr. Gori, I would like to put a particular plug in for the fact that you have clarified for my colleagues why I talk about the Niagara Escarpment and pits and quarries a great deal. This



is an integral part of our area and that natural area all the way from that black, the pit numbered 1, right over to Acton, really, is a wetland area that is the headwaters of significant water sources for the area. The concern is really justified and I appreciate very much your coming and presenting the brief.

Mr. Gori: Thank you, Mr. Chairman, and all of you for being patient.

Mr. Chairman: In welcoming our fourth presenter, Eric Salmond, a private citizen who will be our last presenter this morning, I would like to put in a particular word of welcome. Eric has been in attendance, if you have noticed, at all the hearings since we started at the beginning of the week.

Because of his interest as a private citizen, I had a chat with him, not knowing who he was, and found out that he has been talking about this type of thing for 25 years. He was spoken of very highly by a representative of Pollution Probe the other night at dinner, when I was talking to that individual about another matter. I think we are going to get some experienced input at this particular point.

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ERIC SALMOND

Mr. Salmond: I see you are pressed for time. I think you have copies of the brief.

Mr. Chairman: We are starting at 11:50, so the 30 minutes will be up at 12:20. Do not feel pressured in any way to finish up by noon.

Mr. Salmond: Good morning. Thank you for this opportunity to talk to you.

For about 30 years, I have watched the aggregate industry spread across this province and, in some cases, engulf almost a quarter to a half of some of these townships across the country.

My first real involvement in what was going on took place up in Erin township when I was involved at that time in the early birth of the Guelph and suburban plant, which is now defunct of course. At that time, I got quite an education. My first experience with the Ontario Municipal Board hearing was in 1975, when we had a five-week hearing up in Hillsburgh in connection with the aggregates. Two companies wanted to mine in that particular area.

Previous to that time, my wife and I purchased some residential real estate in Erin township, up on the moraine overlooking the village of Erin. At that particular time, the same year, by coincidence, a big British gravel outfit, a consortium, The Telephone City Gravel Co., was busy buying 1,000 acres across the other side of the Credit River in Erin and Caledon. I did not pay much attention to it at the time, but, at that time, the planning for the Niagara Escarpment Commission and planned development—the Erin township is in the Niagara Escarpment area. Of course, it is still taking place.

We had this hearing and it went on for five weeks. We set up an Erin concerned citizens' association. I do not need a reminder, but I keep this thing on the back of my garage door in the city. We had these "Stop pits" all around, by the Erin concerned citizens' association. The opposition people came along later on, some of the local contractors on the highways, some of

the reeves, and some of the farming community countered with a "Go pit" type of thing. Canadian Tire "Pit Stops" were put in some time later in the future.

Enough about that. I am going to stick to my paper. I am going to read it through.

The industry kept bemoaning the fact—and the ministry talked to this line—that we had not taken out the aggregate under such uses as the Sudbury and Ottawa airports. All the while, the industry kept on saying we would run out of aggregate, while piling up large reserves of land for future extraction.

We must continue to expand and mine in the south, close to our market. The government of the day bought that line—our opposition here; the roles are reversed today.

I watched this from Erin township, in the midst of a high-reserve aggregate area, and from Metropolitan Toronto, where my business took me consistently across southern Ontario by car.

I watched urbanization roll across Ontario, encouraged by some politicians and by the construction and highway- and road-building industry. We are building a megalopolis around the western end of Lake Ontario, the Niagara Peninsula, and west to London, as you all know. All the while, this urbanization has been steadily wiping out farming and the farmer, across an area which, up to now, has been the heartland and breadbasket for Ontario.

By the turn of the century all this food land will be lost to urbanization. If we let this urbanization continue into the next century, except for lands in southwestern Ontario, some poorer-grade lands in eastern Ontario and some better lands in the Ottawa Valley, we will be importing all of our vegetables, meat and dairy products which the Ministry of Agriculture and Food promotes so vigorously.

Perhaps this map will show you what I mean. This is the southern Ontario area here. This is western Ontario.

Mr. Chairman: I am sorry. We are going to have to take a minute to get a mike on you, because when you stand up we cannot pick you up and we lose the record. We will pause for a moment until we do that.

Mr. Salmond: This map, courtesy of the Ministry of Natural Resources, by the way, will help to explain what I am talking about. This is southern Ontario, which is the point under discussion now. This is the western Ontario area here, this is the eastern Ontario area and this is the Ottawa area in through here. I will come back to that map afterwards.

We came here to talk about the Aggregate Resources Act, Bill 170. If this act is approved, I cannot see how it will control extraction any more favourably than the existing one, nor can I see any significant increase or improvement in rehabilitation which, so far as rehabilitation back to original farm productivity is concerned, has been very insignificant to date. The new act is of more benefit to the aggregate industry, not to the public.

There is still no real environmental assessment required. There is still no need to demonstrate the need for a new licence. There is no more control of wayside pits and quarries and, what is most vital, the abolishment of wayside pits.

The new bill makes it easier to transfer licences from one owner to



another, a practice, by the way, which is going on and becoming increasingly familiar.

Under the new act the Ontario Municipal Board still prepares recommendations for the minister and the minister makes the decisions. The board still is not independent. What is the point in going through a long, costly hearing to have the board's recommendations overruled?

As you know, there is currently a long, expensive hearing going on in Puslinch township. As I sit there participating in this thing, I think there has been probably six months of activity going into the thing. In the end, the board may make a recommendation, and because of the local interest or public interest or provincial interest, the minister can turn around and say, "All right, we should allow these licences to come in." You sit and watch these things and you wonder what the point is of going through all this. That, I think, has to be looked into.

That nobody was happy with this bill is indicated by the—I do not know whether there are 17 or 40 or 45 amendments.

Mr. Wildman: There are 17 substantive amendments.

Mr. Salmond: That is better. In my opinion, the bill should be withdrawn and some of the amendments incorporated into the old act.

Since the Second World War we have had a building boom in Ontario. Urbanization is on the move. Aggregate extraction has been the handmaiden of urbanization. Tonnage demands for aggregate have been very good. The industry has delivered this essential material regularly to meet this demand. They have done a very good job in that area.

The ministry has a difficult role to perform. It is a hydra-headed type of organization and there are a lot of conflicts through the whole thing. On the one hand, they are the promoter and developer of aggregate use. At the same time, they act as the supervisor, the reviewer of industry practices: Are they living up to site developments and so on? In other words, they are acting as the police for the industry. In some ways, it is like the fox looking after chickens in the chicken coop.

The Ministry of Natural Resources, through the industrial minerals section, has been a great friend and booster of the aggregate industry. They have seen to it that a continuing increasing tonnage of aggregate was available to fuel that boom.

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Let me explain. They include a large staff in Queen's Park with a decentralized staff in the regional offices looking after aggregate industry interests and at the same time attempting to monitor the industry and to police it throughout the regions across the country.

They produced the Proctor and Redfern report, the mineral aggregate study of the central region, the working party report, the 10-point mineral aggregate policy and the Pits and Quarries Control Act, 1971, with subsequently amended editions, down to today's new Aggregate Resources Act.

The joint policy statement under the Planning Act of the Minister of Natural Resources and the Minister of Municipal Affairs in effect justifies

the continuing extraction where aggregate lies in Ontario. This has far more clout at a planning level than a mere guideline.

The aggregate resources inventory program: Probably the most significant planning tool used by the Ministry of Natural Resources to make an impact on the farming community has been the massive mapping and inventory plan for Ontario, which has brought forth 200 mineral aggregates inventory booklets and open-file reports, which has laid a massive grey mantle across Ontario and mostly across the south central areas where aggregate lies. These reserves lie beneath Ontario's most productive farm land.

I am referring to these books here. This is the Puslinch aggregates book. There are not 200 of these books. At most, there are about 150, as I recall, of these booklets. They are very well detailed. It is very useful for planners and it is very useful for the townships and municipalities to know what is in that area. This is the one for Puslinch township, which is under discussion at present. It is item 54, which is right here in the middle of this area here. These booklets are very useful.

The major booklets, the green booklets similar to the Puslinch one, are enclosed in these areas here. This is the map on the index of aggregate inventory resources publications in southern Ontario. It is this central area here where the massive aggregate extraction is taking place and where the reserves are. The fact is that the stuff is in the ground.

The question is: Are we going to take all that out or are we going to maybe try to conserve some of this stuff, put a stop on it for a while and see where we go from this thing? This also coincides with very highly classed agricultural potential, farm land potential in Ontario. The lands directorate of the Department of the Environment in Ottawa has been doing a yeoman's job of trying to educate the people on how we are continually losing this farm land in southern Ontario. Some people pay some attention to it, but generally speaking, governments—particularly, I think, the Ontario government—have not paid very much attention to this.

You can see that these class 2 and class 3 lands, the best agricultural lands, lie right beneath this area here. Incidentally, this land, as far as soil and climate are concerned, is unique to all of Canada; it is the best farming land in all of Canada. We can grow more mixed varieties of fruits and vegetables on this chunk of land here than on any other part of the country. But if we keep on going with urbanization the way we are going, we are going to lose that by the turn of the century. At the turn of the century we are going to be importing all of our food.

These aggregate maps are being placed in all township official plans. They indicate the possible availability of aggregates within the township. That is not to say that they are going to be extracted, but there is a possibility they will be. These lands are to be kept available for possible future extraction.

Farsighted aggregate producers had been working with the Ministry of Natural Resources to identify, buy up or option this type of land for possible future extraction long before the advent of these maps. As I indicated, a firm bought land in Caledon in 1956 and sat on it. It was probably some of the best productive farm land in Erin township. Initially, they accepted a bit of cattle grazing and so on, but not since. I do not think there has been a stick or a crop or a cow on that land since and here we are in 1989.

These maps and the accompanying mineral aggregate resource planning



policy triggered a wave of buying and optioning farm land which had a powerful impact on the farmer or the owner of the rural land. Whole farms have been bought up or optioned, in some cases, far in excess of the land needed for extraction. The farmer gives up farming. This buying spree has left a legacy of farm land lost to farming and farmers.

I spent an afternoon up in Erin township recently. On some land immediately east of Erin village, which was not allowed to be developed because of that hearing taking place at that particular time, tiny city-type lots in the undisturbed area are selling for \$110,000 to \$115,000. When we bought land up in Erin township, the little village had 975 people. The population is about 2,000 this year. You can see what is happening out there. My point is that these aggregate producers, the wealthy ones, are aggregate producers but they are also big land owners. That could be checked out: who owns all of these lands in these high-reserve farm land areas.

By the way, I have also been a member for many years of the Preservation of Agricultural Land Society. I got involved with the Foundation for Aggregate Studies as a member in 1977 and later became a director. We have kept this foundation alive. Some very extensive research was done when these maps came out. It was estimated that over 500,000 acres of farm land were mapped. That is a huge chunk of land in southern Ontario, mostly in the heart of this high-reserve farm land area. This is the land that has kept the industry land scouts as well as the rural real estate industry very busy. They have been really busy on this kind of thing.

During all this planning activity, the Ministry of Agriculture and Food has been strangely silent when it comes to land involving farm land and aggregate. They did nothing to raise an alarm about the loss of farm land to aggregate extraction. They never appoint legal counsel from the ministry before an Ontario Municipal Board hearing involving extraction of farm land, certainly not in all the hearings I have been involved with. We had five weeks of hearings up in Erin township in 1975. I do not think anybody from the ministry was either called as a witness or volunteered to be a witness; they certainly had no legal counsel. I have attended and participated in many OMB hearings in Niagara fruit land areas and various regional OMB hearings since that time and, to my recollection, I cannot recall any legal counsel.

The same is true for Puslinch at present. I went up there the opening day of the conference. I counted about 36 planners and lawyers in attendance and named in this thing: from the Ministry of Natural Resources, the Ministry of Transportation and so on and the University of Guelph and their lawyers and the four or five gravel companies and other people who own land up in there. There was no advocate or counsel from the Ministry of Agriculture and Food. I wonder why they were so silent.

They still do not. They either do not know what is happening or because it involves aggregate, remain silent. They have been warned repeatedly by the lands directorate of the federal Department of the Environment about the loss of land around our Ontario cities.

Listen to this astonishing statement in the March 19 Sunday Star at the end of an article entitled Food Worries Called Baseless. This, quoting Don Dunn, director of the Ministry of Agriculture and Food's foodland preservation branch.

"As long as we try to ensure that primeland is treated with respect and as a limited unique resource, not as a commodity, we're not worried," he says. "I can't see any risk on the horizon as far as running short."

My contention is that by the end of the century if we keep going the way we are now, we are not going to have any of this thing left for farming. Yet we continue to publicize the wonderful fresh fruits, vegetables and dairy products we produce on our food land while it continues to be paved over. It is almost as if we fiddle while Rome burns.

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What of the future? There is still some prime farm land left to protect in south-central Ontario. When the new government came into office, there was hope the new government understood what was going on with aggregate extraction and that it would do something about it. I wonder whether it will after seeing the new Aggregate Resources Act, Bill 170.

Since the fall of 1987, the writer has been in correspondence with the Premier (Mr. Peterson) over the loss of our farm land. I wrote a short article the Star ran about the loss of this to suburbia and urbanization in southern Ontario. Would the Liberal Party do something about this kind of thing? I sent a copy of the article to the Premier. The Premier very courteously replied and we have carried on quite a correspondence since that time.

On September 11, 1987, he wrote to say: "My government is very aware of the importance of Ontario's prime farm land to our present and future economy and to the wellbeing of this and succeeding generations of our citizens. I can assure you that we are committed to the protection of our agricultural land."

On March 21, 1988, he wrote to say: "As you may be aware, a policy statement under the Planning Act is currently in the process of being revised which, upon approval, will replace the Ontario Foodland Guidelines....We hope to finalize this policy statement in the near future and we will keep your views in mind when doing so."

On January 13, 1989, he wrote to say: "The Ontario government has recently introduced a bill to control this extraction in a more comprehensive fashion than the existing Pits and Quarries Control Act. Emphasis is placed on the rehabilitation of exhausted pits, so that alternative or original uses may be undertaken—"alternative" uses is the key word here—"at the end of the extraction operation."

On March 10, 1989, he wrote to say, "The government of Ontario is committed to both the protection of our agricultural lands and to ensuring the continued availability of aggregate resources." There is a bit of a change in emphasis in that one.

We have not yet seen a policy statement for food land similar to the mineral aggregate resource planning policy. When will this be brought forward?

The Ministry of Natural Resources statistical data tell us—this is very complete, by the way—that we have enough reserves of aggregate to last well into the next century.

Now, possibly, is the time to place a freeze on the issuing of new aggregate licences in the south-central region of Ontario—there on the MARPP map. This freeze should extend for a period of at least 10 years. This freeze would also include wayside pits. There are enough licensed pits scattered widely across the region to make these pits close to the highway and road contracts all across the region.

I can understand why they are roadbuilding in this way. They want to be



able to cut land and get their gravel close to the site at least. I was in the publishing business for many years and we publicized this fact. I realize what they are doing. The construction and the highway industry can live off the licensed present reserves for a considerable time.

One of the problems, again, about these wayside pit operations and so on is that it is sometimes the case, as with the Regan-Graham operation up in Caledon—I remember the Armbro people, who have one of the largest operations up in Caledon. For the last 30-odd years, they have been hauling crushed rock on the main line from Marmora down by rail to Toronto.

At the same time, this company is widening Highway 401 out between Oshawa and Whitby, opening up yet another wayside pit in the south part of Uxbridge township. You are probably aware of this. As I understand it, that is now a licensed operation. They have a permanent operation in the south of Uxbridge, which already has 40 or 45 licensed operations down there.

Mr. Ballinger: For the record, it has been rehabilitated and there is no operation.

Mr. Salmond: Good; glad to hear it.

My point is that there is such an inference, if you study these maps here. There are so many large licensed operations that the road construction industry has a tendency to use this wayside pit operation. There is nothing wrong with it, but it really plays havoc with planning and a township trying to control its land use in that particular area.

It is suggested that 10 years' time be given to the industry to develop alternative sources along the main-line railroads from the north, along the east-west Windsor-Quebec corridor and by water through the Great Lakes.

I know time and time again the industry keeps on saying, "We cannot. It's going to knock us out of existence," and so on. There are still some main-line, heavy transcontinental lines from the north country that could be utilized if necessary to haul trains down to the central Toronto area and the southern Ontario area, if we have to.

After all, aggregate is a diminishing resource. It is nonrenewable once you take it out, sooner or later. The more urbanization, the sooner we are going to exhaust these pits in southern Ontario. So we are going to have to get it from somewhere else anyhow. My point is, why do we not start some of it now? I am sure the more farsighted aggregate producers have already got their connection lined up in northern Ontario and other places for alternative sources of this.

Perhaps in the long run, the only way to protect food land will be by legislation as the province of Quebec has done successfully through its Bill 90 and its land use commission. Only by doing these things with regard to aggregate extraction and deciding somehow, through incentives, for people and industry to settle in less sensitive food land areas in the province will we begin to protect our food land in the south-central area of the province.

In conclusion, I might say it seems to me we have only two choices. We can continue as we are—again, whether you produce the aggregate, we have chased out all the aggregate—and develop southern Ontario into an urbanized area or we try to do something about it. The future will tell what we are going to do.

My time is up, so thank you very much for the opportunity.

Mr. Chairman: Before I recognize Mr. Pollock and then Mr. Wildman, we have only three minutes left. Since we waited for a quorum until 10:15 and we are doing pretty well to finish up by 12:20, we have stuck to the schedule pretty closely. I am going to cut it off right at 12:20, because we are accommodating a group that filed late at 1:30 this afternoon. I am just reminding the committee that we decided that yesterday.

Mr. Pollock: I can appreciate your comments on preserving good farm land. It is a known fact that for the last 20 or 30 years our prime farm land has been slipping away, and I would say that within the last two or three years that has continued. In fact, I would actually say it has increased. On the other side of the coin, you have got to live with reality.

For instance, I know people, two brothers who had a large farmhouse, who sold their farm for \$185,000, then went into a village to buy two houses and found out they could not even buy two houses for what they had sold their farm for. I know of another situation where a person said he rented land and he said he rented the land because the price was right: He got it for nothing. That has turned around just lately, where you can get something for renting land out to an individual. Maybe you have some magic solution for that—I do not know—but that is the reality out there.

Mr. Salmond: I perfectly understand the problem. Some of those men up in Erin township who sold in 1955 have been living on easy street. That is fine. That is one of the pressures. It is an urbanization pressure. I pointed out that for a tiny building lot, land that was bought in 1955, you can get \$115,000 or \$120,000. That is the size of the lot I have up in North York, not much larger than that. This is the reality of the thing—I realize it—in trying to buy lots of land in Toronto. This is all part of the urbanization business.

This is a map showing the highway and road system plan that the Minister of Transportation (Mr. Fulton) has proposed. This is working on the year 2001. There is a tremendous huge grid in here. These highways, these roads take up millions of acres of farm land, far more than aggregate uses and so on. But that is all part of it.

Do the people want this? Do we need it? This is what is going to happen, because these things are going to go in. You have to get the gravel to do it, but by the time we come to early next century, given that the aggregate industry and the Ministry of Natural Resources say we are running out of gravel, we will run out of it very quickly.

Mr. Chairman: I am going to have to interject at this point. Mr. Ballinger has a supplementary to this question and Mr. Wildman has a question. I am in the hands of the committee. The time is up. Would you like to ask your question, Mr. Wildman?

Mr. Wildman: I just have one question, if the committee wants—

Mr. Ballinger: I will just be one second. I just want to—

Mr. Chairman: Supplementary and then Mr. Wildman. Be brief please.

Mr. Ballinger: I just want to focus on your point about the loss of agriculture due to extraction. The very pit you mentioned in your comments for



the construction of Highway 401 in the township where I live has been completely rehabilitated back into its original state of agriculture.

Mr. Salmond: It is very insignificant in comparison to the total amount of land that has been disturbed since the Second World War for extraction. Most that has gone back to a compatible type of thing, such as recreational parks, golf courses, industrial sites or housing sites and all the rest of it—by the government's own admission in this little booklet here, if you look on page 5 and 7, the size of those acreages is rather insignificant. There are some done; some good wayside pit reclamation has been done back to the cropped areas.

But the total of all the land that has been rehabilitated—by the way, the major companies in the industry are doing a much better job of rehabilitation. I am fairly familiar with the eastern United States and Ontario today on the roadside is far more—you do not see the mining operations you do in Pennsylvania, Ohio and places like that. It is 1000 per cent improved. Great. Give them credit.

Mr. Ballinger: The only subject—

Mr. Chairman: I think that was a fairly complete answer. Thank you.

Mr. Wildman: Just one point: This afternoon, hopefully, the ministry officials will clarify the question about what the future is for the amount of aggregate we need in Ontario.

But in regard to your paragraph number 35, sir, I would just say that if your proposal were accepted we would obviously have to have northern Ontario designated under the act, because already aggregate is being shipped by barge across the lake from my area to Collingwood to come down into the Metro market. You would have to designate northern Ontario under the act.

Mr. Salmond: I think the whole problem is that we are going to have to. What happened in the legislation on farming in Quebec was that they started with the St. Lawrence Valley, the Ottawa Valley, right where all the principal agriculture lands were. Now the entire province is designated under this.

Mr. Chairman: The answer to the point is that the entire province should be designated, in Mr. Salmond's opinion.

I am sorry for rushing you, but I really have to cut it off for now. We have to come back at 1:30. Thank you very much for coming before the committee. Meeting adjourned until 1:30.

The committee adjourned at 12:24 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

THURSDAY, MARCH 30, 1989

Afternoon Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

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Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From Envirowatch Coalition:

Landry, Rita

From the Mulmur Association of Residents and Ratepayers:

Hahn, David

Coffey, Robert G.

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, March 30, 1989

The committee resumed at 1:39 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Mr. Chairman: The chair recognizes a quorum. The reason for doing this is we have been advised that the first presenter is still tied up in a business meeting. Because of the availability of David Hahn, who is representing the Mulmur Association of Residents and Ratepayers, and his associate Bob Coffey, who are here and ready to go, with the concurrence of the committee I think we will ask David and Bob to come to the presenters' chairs and we will do it in reverse order.

Could I make one additional comment before you go on? Mrs. Landry, in case you are nervous about Mr. Minns not getting here by the next half-hour time, the ministry is present and is ready to go after this half-hour, so just relax. Whenever he gets here you will have 30 minutes to present, as long as it is this afternoon.

Mrs. Landry: Thank you.

MULMUR ASSOCIATION OF RESIDENTS AND RATEPAYERS

Mr. Hahn: Let us introduce ourselves. My name is David Hahn. With me is Bob Coffey. We represent an association called MARR, which is the Mulmur Association of Residents and Ratepayers. You have previously heard from, I think—I am not sure whether they have been on—the Mono-Mulmur group of people who are concerned about a school issue. We are from the same township, but we are really looking at probably broader issues than just the question of that school.

I am sure most of you know where Mulmur is, but in case you do not, it is a township that is located north of Highway 89, sort of north and east of Shelburne and south of Collingwood. It has a population of around 3,000 people. The mix of the area is—it used to be agricultural, but now you have probably a preponderance of people who have moved out from the city and who live there with farming still being carried on. The Niagara Escarpment runs through the township, and one of the prime reasons that a lot of people like ourselves have moved there is because of the natural attraction of the landscape, the geography of the township.

I think that we are very grateful to be allowed to give our viewpoint on this particular bill. The bill, as we all know, has been in effect for a long time and the revisions are long overdue. There are many, many problems in the aggregate industry. We all know what they are. What we are trying to do is find a way of resolving some of these problems.

In our opinion, the bill is a major improvement over what has been in effect in the past, but it still falls short of what we would like to see. We see a bill that has the potential of being able to rectify the concerns and problems of the past, but the bill at the moment has not reached that



potential. Before we get into specifics on the bill, I would like to look, if we may, at a few sort of general principles, look at what we are trying to achieve and then see whether the bill meets that test.

We know that the extraction of aggregate involves conflicting interests, and the purpose of this bill is obviously to try to find a fair way of resolving those conflicts. On the one hand, we know that there is a need for aggregate. We, as taxpayers in a township that has gravel roads and so on, want to see aggregate provided at the lowest possible cost, and the economy needs aggregate for its general construction industry and other economic wellbeing. We know that some people have land on which there is aggregate and they would like to be able to realize the value of that asset.

Against that we have the need to conserve whatever resources we have in the province, we have the need to protect the environment and we have the need to protect the people who live in the community from the adverse impacts of the extraction of this aggregate. The question then is one of balance: How do you balance these interests and does this bill do that?

It seems to us that in trying to balance these interests there are some general principles. First, we feel that before aggregate is extracted there should be a definite need for a new source of aggregate, that we should not just go ripping up the landscape because somebody has aggregate to sell and wants to sell it. The need and the availability of other sources must be looked at before we start to open new sources, because with an open pit there is rehabilitation required, and surely the ground should be rehabilitated before we start destroying new ground.

When we look at the costs of low-cost aggregate we have got to look at full costs or true costs. We cannot, in looking for low-cost aggregate, just dig up aggregate at low cost and pass on the true costs of that material to the next generation. We have been doing that, I think, for a long time in our forestry industry, in our pulp and paper industry, in our nickel industry up in Sudbury and so on.

When we are talking about the costs of aggregate, we must have those costs reflect the impact on the environment, the cost of rehabilitation, the cost of maybe taking food-producing land out of production and the cost of destroying recreational land that may not be able to be provided again. In looking at cost, let's look at all of the costs.

The rules have to be the same for all people who are working under the act, they must be enforced equally and fairly to everybody, and people should know what the rules are. We, as citizens, should know what rights we have. The people who have pits should know what rights they have, and those rights, as I say, must be applied equally and evenly.

Because of the potential for conflict that is there, because people can profit by getting an unfair advantage over a competitor, because of the problems that arise for land owners who are adjacent to pits and so on, the process must be absolutely open and fair and it must be seen to be such so that everybody knows that the rules are being enforced fairly, they know what the rules are, and there is little room for any hint or suspicion that somebody is getting an unfair advantage.

Finally, because the extraction of aggregate affects the daily lives and the quality of living of people in the community in which the aggregate is being extracted, as much local control and local planning as is possible should be allowed in the process.

Thinking of those principles, let's turn to the bill itself.

We agree that the bill is a great improvement, that it is moving in the right direction and that there have been many major advances made by this particular piece of legislation. I do not want to take the time to sing all the praises of all the good things in the legislation; we know what they are.

Mr. Chairman: Your papers are hitting the mike. You are probably causing somebody a great deal of aggravation somewhere in the building.

Mr. Hahn: Is that why that gentleman in the corner is jumping up and down every minute?

A good example, of course, of the things we are very happy about is the protection of the Niagara Escarpment Commission in the latest amendment to the bill.

We also agree with much of the criticism that has been raised against the bill by the Foundation for Aggregate Studies in its basic brief and in its comments on the amendments that have been proposed at this stage of the bill. We do not really want to take time going through that list of material in detail. You are all familiar with it and what we would like to do is really focus on a few of the key points that are of particular importance to us.

These points really are four in number. First, we are concerned about the definition of the environment that is in the bill. Second, we are concerned about the rights of municipalities and what has been done to those rights. Third, we are concerned about the fact that, to our way of thinking, the recurring problem and abuses of wayside pits have not been corrected. Finally, we are concerned about the wide degree of ministerial discretion that has been allowed in the legislation.

Starting with the environment, the definition to us is narrow and restricting and will not protect the rights of neighbouring residents. It does not address the problem of transporting the aggregate from one area to another. It does not really address the question of need. We strongly urge that the committee adopt the definition of the environment that is used in the Environmental Assessment Act.

If I can shed our basically nonpartisan approach for a second and just talk personally, when the government party was in opposition I worked long and hard for the party over a number of years and I was very happy to support the policies of the party and to support the proposals that the party made. I was particularly happy to see the proposals being made to rectify some of the problems in this particular area that were advanced about 10 years ago.

I must say that when it comes to the definition of the environment, I am somewhat disappointed to see that the party has changed its direction so radically and so drastically. It seems to me that while there are some things that maybe are not practical when a party in opposition moves to the other side of the fence, there are some principles that I think should be maintained.

I consider the principles of broad protection of the environment and broad definitions of the environment in the extraction of gravel to be a matter of strong principle. I am disappointed to see it watered down, and I hope that this committee will really seriously have a look at that and see if it will not consider moving the definition back to where it had been proposed: back to a point where, in our view, it will really protect what it is supposed to protect.



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The second area is the question of the rights of municipalities. In our view, this bill is intrusive on those rights. When I have finished, Bob Coffey is going to give you an example of the intrusion into the local affairs of our community that we feel is unwarranted.

It is intrusive because local zoning can be overridden in the question of wayside pits. It is intrusive because the municipality is notified of a change of licence not as a matter of right but if the minister deems that he should notify the municipality. The minister has the option of not notifying, and it seems to me, again as a matter of principle, that the municipality should not have to receive notification of changes in a sense on a whim but should receive that as a matter of right.

The municipalities use rights to apply more stringent rules to the operation of these pits than they might wish to control as a local municipality. It seems to me that if a municipality chooses to apply more stringent rules, it should be allowed to do so as long as those stringent rules are applied equally and fairly to all people who would choose to operate within the community.

Finally, a municipality is allowed to comment on the operation of pits every year or every four years but is restricted in the areas in which it may make those comments. It seems to me that that is an unnecessary and unfair muzzling of the rights of a local organization to speak on behalf of its residents to a body that in a sense has the ability to intrude in and control their area.

My question is, why do we need to allow those intrusions? Why can we not trust the municipalities to deal with the problems under—if I can use the words—a more generous framework of control? Is there any real need to restrict the operation of municipalities in this way? We feel there is not and we urge that these points be looked at.

The next general area is the question of wayside pits. As we know, the situation with respect to wayside pits at the moment is appalling. Really there is a feeling—maybe it is not correct, but at least it is the perception—that wayside pits are a back door, almost a secretive way, to get the benefits of a licence without having to go through the process of licensing, and it seems to us that in principle this is wrong.

In reading the debate on second reading of the bill, I notice that a number of people raised that point during the course of that debate, and I do not think that the bill or the amendments that we are aware of has corrected that major source of irritation, that major source of problems.

I do not want to repeat all of the details of the legislation and go through it point by point, but we feel very strongly that the legislation, if it is going to correct the problem of wayside pits, must ensure certain things. The things that we feel should be ensured are these:

Wayside pits should only be allowed after really careful scrutiny shows that no licensed pit can meet the need and that there is a real need to go beyond the licensing process and issue a permit for a wayside pit. Permit requirements must be as stringent as those for a licence. After all, it is the same environment; it is the same set of problems that are being created. Therefore, why should they not be dealt with in the same way?

We think there must be strict limits on the tonnage that can be taken from a wayside pit and the duration for which that pit can remain open. There are many cases—again, I refer to the debate on second reading—of pits that have gone on and on, and there appears to be no effective way of limiting that. We feel that the legislation should state that renewals of permits should be disallowed. When a pit has fulfilled its initial purpose, it should go through the same process, if it is required, of justifying the need again.

Finally, we feel that local zoning should not be overridden in as cavalier a fashion as the bill allows. A municipality should be allowed to rule or pass zoning bylaws that declare areas to be of particular environmental sensitivity and make sure, in certain areas within that municipality, that the wishes of the people are sacrosanct and that no outside force can come in and override their wishes.

To repeat, wayside permits must not be allowed to continue to be a factor in the gravel business. This major irritation really must be curbed.

The last point is the question of ministerial discretion. We know that under the proposed legislation, and I will just list a few things, a minister can amend licences; he can amend site plans; he can override local zoning; he can issue wayside permits; he can override an Ontario Municipal Board decision; he can decide what land should be designated and what land should not under the act; he may decide not to revoke a licence, even if the fees for that licence have not been paid; he can vary the conditions that are attached to a permit. If he varies a condition on a licence or grants a waiver from the regulations in compliance with the regulations, which he is able to do, he does not, as a matter of law, have to notify the municipality concerned.

To us, that is not really legislation. It is really a legislative blank cheque. We feel very strongly that in this area, time should be taken to spell out in the legislation what the minister can and cannot do and to spell out the conditions under which certain things can be done under the act.

We all think that allowing wide leeway in a bill will not be abused. We all think we can trust the government, the officials, the minister. I am sure, with the best will in the world, most ministers and most governments are going to try and behave in a responsible way.

On the other hand, it has been 18 years since this current legislation was passed. Who knows what is going to happen in the next 18 years? Why should we allow the possibility of the appearance of abuse, the appearance of special treatment, the appearance of unfairness and so on? Why should we allow that and create that problem, when we could legislate and prevent that from happening? It seems to us that this whole question of ministerial discretion must be looked at much more carefully than is implied in the bill at the moment.

That really summarizes the main concerns we have. Because of time, we have only dealt with the negative. Again, I want to reiterate that we feel the intent of the bill is good. Many of the provisions in the bill are good. The bill has the potential of being a truly effective, worthwhile piece of legislation, but we do not think it is there; it has not reached that point yet.

We feel that this committee has the power to correct the flaws, the deficiencies in the bill by passing amendments that will resolve some of these problems. We also feel it has the responsibility to do this. In the interests of our ratepayers and the people of the province, we urge you to do just that.



Mr. Chairman: Thank you very much, Mr. Hahn. Mr. Coffey, I think at one point Mr. Hahn said you wished you expand upon one aspect of his presentation. I should caution you that we have another 10 minutes, so if there are any questions—

1400

Mr. Coffey: Right. We just thought that by going through a specific example, we might be able to give some added weight to some of the concerns David has presented. This particular issue consists of the transfer of a licensed pit, not a wayside pit. This pit is in the prime zone, the most restricted zone in the Niagara Escarpment, located on the centre road, south of Highway 25 on the map of Mulmur. My property abuts the land on which the pit existed.

I have spent a lot of money. I have about 12.5 acres. I am right on the edge of the Niagara Escarpment. I have a 950-foot stream flowing through; I have trees. I think most people would say that when I came into the area, I did my utmost to make the property look good, enhance it, what have you.

Unfortunately, because of the way the escarpment runs, my house is probably 50 feet from the road. In my case, I have a road that is a gravel road, 24 to 25 feet wide. We then have a ditch and some lawn. We then have a fence, which is my property line. The distance between the road to my property line is probably no more than 30 feet. I have planted tall trees, because my house is probably 20 feet beyond.

A local farmer was operating a pit on a casual basis and could not have been taking out more than 75,000 tonnes or what have you; I cannot really comment on the figures and they are kind of immaterial. When all of a sudden that licence was going to be transferred to a commercial operator, I was not even notified and most of our neighbours were not even notified that this was being done. The Niagara Escarpment Commission knew about it and said, "No problem." The Ministry of Natural Resources knew about it and said, "Kind of no problem."

When we found out it was happening and went to the committee of adjustment, we presented a whole lot of things that caused us concern, such as access, such as speed, such as dust, such as hours of work. Of course, at that particular time, and I think this is the main issue that costs us all, nobody really knew what you could or could not do or who had the power to do it.

The township was under the impression that it had absolutely no weapons in its arsenal. They said they cannot do anything about it, that it is up to the Ministry of Natural Resources and the Niagara Escarpment Commission. So I had to start conducting my own research, which took a substantial amount of time and \$4,000 to \$5,000 in costs. I might just as well not even have bothered, because I was completely ignored. I was able to point out to the township that it could have had a subdivision agreement that could put some limitations in the hours of work, could put some limitations in terms of the road, that might have even put levies on the trucks coming out of the road in terms of speed and what have you.

These are massive trucks. We were dealing with four-wheelers; now we are dealing with 18-wheelers. We have no control on the dust. We have no control on the hours. If you walk down the road with your grandson even on Easter Sunday, you cannot walk 400 feet without three gravel trucks going by you.

My own impression is that nobody cares. I wrote to the ministry. They said, "We'll let you know." They put no conditions at all. This is an absolutely open licence. All of the verbal representations which the new operator made at the township meeting were completely ignored. Of course, we are concerned that the pit can start to move north into the Niagara Escarpment area and other zones. On the basis of what has happened so far, we have the same perception and fear. Of a whole lot of things that cause the residents problems, one is fear.

At present, the pit has no restrictions. There are no speed zones, nothing.

I think another of the problems is lack of funds in the case of the municipalities. They are afraid to go to the Ontario Municipal Board because they know that is a \$40,000 or \$50,000 ticket. In most cases, I would say this is a problem that must be rampant all over, in every municipality. I would like to suggest that there ought to be ways and means of quantifying these rules so that not everybody has to go in and completely do all of their own independent research time and time again.

So the problem happening right now is that as a citizen up there, my perception is that I have completely lost my rights; I have no rights at all. I have to suffer all of the dirt in my pool or whatever. I have no way to control the situation other than to buy a substantial truck and park it on the road and cause an accident, which is an irresponsible way of handling it.

I think David's point, on balance, is something that I as a citizen do not see in this bill. My perception as it is, on one side—and as I have been on the other side and have had to suffer all of the consequences—is that all of my rights have been completely taken away.

Right now we have one last issue, which I will let David talk about. Now we have temporary and portable asphalt plants. This is coming in. At one time the township and the citizens had been able to acquire a 1,000-metre setback; now that is probably going to go to the OMB for a 100-metre setback. Nobody knows where this can be, and it is in connection with a licensed pit or a wayside pit. Up our way, nobody knows the difference between a licensed pit and a wayside pit. So fear is now taking over and we are going to have a lot of people up in arms because of this asphalt plant. I am concerned that we will have cement factories right in the heart of the Niagara Escarpment.

I will let Mr. Hahn continue.

Mr. Hahn: The question of the asphalt plant is really a local municipal issue. Our local municipality is intending to pass a zoning bylaw that would permit this. We are going to find out if we can. The municipality has finally agreed to have a public meeting to discuss why we have to have a bylaw that will permit this and so on.

It is a local issue, but I think there is a significant point I would like to make in connection with it. That is, the municipality feels itself under some pressure from the Ministry of Transportation and the Ministry of Natural Resources to pass this zoning bylaw. It seems to us that the provincial government should not be putting that type of pressure on a local municipality and urging them to zip something through that has not been discussed by the people in the community.

I think we will be able to resolve it at the local level but, again, it is an example of some of the concerns that people have living out in the areas of potential gravel extraction.



Mr. Chairman: The time right now is almost coincident with the maximum amount allowed, but in view of the fact that the second presenter is not in attendance yet, with the concurrence of the committee I would like to recognize the four people who caught my eye, as long as they are reasonable with respect to the length of time of their questions. Is there any objection to that? Mr. Wildman, then Mr. Pollock, Mr. Faubert and Mr. Ballinger.

Mr. Wildman: Thank you very much for your very competent and straightforward presentation. As Mr. Ballinger intimated, I have been around here for a while and I remember very well the debate around Bill 127 under the previous government, which you may be familiar with.

At that time, the opposition Liberal Party advocated that all pits and quarries be subject to environmental impact assessment and that the Environmental Assessment Act apply to new pits or quarries. Since you said you were involved in pressing for change over some time, was that a position you advocated and, if so, do you think it should be a part of this bill?

Mr. Hahn: I am not sure. I would not really want to say that, yes, I think that should be. I feel that the definition must be very strong. I can see the problems in having an environmental assessment because of the length of time, the delay and so on, so I am not going to say yea or nay to that, but very definitely I want a much stronger definition of "environment."

1410

Mr. Wildman: You would at least prefer to have the same definition of "environment" as is under the Environmental Assessment Act.

Mr. Hahn: Yes, I would.

Mr. Wildman: Failing that, would the definition under the Environmental Protection Act be an improvement over what is in this legislation?

Mr. Hahn: I am not familiar enough with that particular definition to comment.

Mr. Ballinger: You got Bud at a good time. He just happens to have it.

Mr. Hahn: I am sure.

Mr. Wildman: Okay. The amendments that are before us define "environment" as "land, air and water and includes the use, condition and natural features of the site and adjacent lands." That is in the amendments here. You have already talked about the Environmental Assessment Act. The Environmental Protection Act does not have as wide a definition as the EAA, but its definition is, "'natural environment' means the air, land and water, or any combination or part thereof, of the province of Ontario."

Mr. Hahn: Does it include noise?

Mr. Wildman: Yes, noise would be included in that because you are talking about air pollution, in effect.

Mr. Hahn: It would include the areas over which trucking would pass.

Mr. Wildman: Yes, that is the difference. The amendments that are before us say, "the site and adjacent lands." The EPA says, "the province of Ontario." That is the significant difference.

Mr. Hahn: To me, that is a much better protection than the wording that is there now. The wording that is there now limits it to the site and adjacent lands, and who is to define how adjacent "adjacent" is?

Mr. Wildman: Yes. Does it mean just the adjacent lot or could it mean the whole neighbourhood?

Mr. Hahn: That is right.

Mr. Ballinger: It does not say "abutting," it says "adjacent."

Mr. Wildman: That is true, it does not.

Mr. Ballinger: There is a substantial difference between the two.

Mr. Wildman: I would agree with—

Interjection.

Mr. Wildman: I was going to tell the chairman I agree with your position that the Environmental Assessment Act definition would be preferable, but it still would be an improvement for—

Mr. Hahn: I would prefer the broader definition but probably, recognizing the limits of possibility, would accept the EPA. The major concern I have about the present one is how you define "adjacent."

Mr. Wildman: The only other question I had—

Mr. Faubert: On a point of order, Mr. Chairman: I guess if Mr. Wildman is going to quote a section of the Environmental Assessment Act, he should quote it in its entirety. He quoted three of the six parts.

Mr. Wildman: I was concerned about the time. If you want me to read the whole—

Mr. Faubert: No, I did not want you to. It is just that when you quoted the definition of the "environment" you quoted three of the six parts as opposed to the whole thing, and then you asked Mr. Hahn whether he preferred that definition.

Mr. Wildman: Well, okay. If you want, we can—

Mr. Faubert: No, I do not want you to quote it, I just want him to know that it was an incomplete quote.

Mr. Chairman: I would like to exercise my prerogative as the chairman. He just wanted, on a point of order, to note that in the record. I do not really think we want to read it.

Mr. Wildman: All right. The only other question I had was that we have had different positions put forward before the committee with regard to



wayside pits and the definition of wayside pits and how they should be controlled. I note that you say you think there should be limits on tonnage as well as duration.

Under the amendments before us, the site is no longer temporary, the project is temporary. In my view, this is a step backwards from what is under the Pits and Quarries Control Act. If, however, you had a limit on tonnage that would be allowed in a wayside site, that might get around that problem. Do you have any ideas of what the tonnage you would recommend might be?

Mr. Hahn: In my view, it would be the tonnage for the project and it probably should be a combination of the tonnage that is there and the time, which is temporary. I think it has to be like a car warranty; so many tonnes or so many weeks.

Mr. Wildman: I see what you mean. Just a hypothetical situation: What if you are talking about a major highway contract and it was going to be a two-and-a-half-year job and they needed three million tonnes? Would that be something you would consider acceptable for a wayside operation, or should they be—I keep in mind that you said they should check to see if there are sites available already that are licensed.

Mr. Hahn: My feeling is that under those circumstances it should be a licensed pit with the rigours of licensing.

Mr. Coffey: And I think it would be a different condition there because of the size of the situation. So your suggestion of a size limit on a wayside pit is also another thing that would be of assistance: that, in my view, a wayside pit, if you are going to have it, is deemed to be for so much time and tonnage and the tonnage should have a maximum, whatever that is, at a very low amount.

Mr. Pollock: In eastern Ontario, in particular the Bancroft area, they say it is a prospector's nightmare; meaning, of course, that there are rich deposits of minerals but they are not in big enough supply to warrant ever mining them. It is basically the same as far as aggregates go. There are small deposits of aggregates, and when the good Lord put them there I guess there was no limit; he did not have a tonnage ratio when he put them there. Therefore, to limit it to tonnage would be a real problem.

It has been mentioned here at this committee that to take out a licence costs roughly \$1 million and it usually takes around five years. That is putting on a big restriction. In fact, it is ruling out all those, you might say, one-horse operations or private individuals who have a front-end loader and a dump truck. It is practically ruling them out completely.

Mr. Coffey: Excuse me, ruling them out?

Mr. Pollock: They are in areas, I suppose, where there is very limited population even.

Mr. Coffey: What is it ruling them out of? I did not understand what they are being ruled out of, these small truck operators.

Mr. Pollock: They cannot get a wayside pit if they do not have the \$1 million to license it.

Mr. Coffey: But presumably they have a project, and because of the

economy of scale, should we be requiring them to go to \$1 million to have a pit? We should be having a licence for a wayside pit that has a time and a duration for the project, and you could then mine the thing down and replace it naturally in terms of the environment and everybody would be happy. He could have his benefits. He could make an application. It is for a short duration. Now they have to move in on an essential and effective basis and it is over, and everybody would be happy.

Mr. Pollock: I doubt if that is really the way it would work, because they might start a road project that would drag over a five-year period.

Mr. Coffey: But the road project is down the road and the mobilization of the equipment and the haul are the expensive things. Someone who was doing it logistically and who knew all of the cards in the area could almost plan, "I open this one this time and I put it in here and I do that." That is what happens when we do the exchange of landfill on contracting sites.

Mr. Pollock: There are not gravel pits every place you turn around there. Along, say, Highway 504, you would do well if you even got one pit along that whole area. They might have to haul it in from somewhere in the area.

Mr. Coffey: Then it would be over. Up in that area—and I think you are talking a different area—there are minimal residents.

Mr. Pollock: Sure.

Mr. Coffey: You are trying to put something in an area which is going to become the bedrooms of Toronto, so to speak, and you are going to saddle it with conditions that maybe you should not saddle Haliburton with.

Mr. Pollock: I agree; but there has been a lot of talk here about one plan right across the province. I realize that you have not been sitting in on all the hearings, but that has been mentioned.

Mr. Coffey: I personally can guarantee I can make one plan work. All it takes is a little bit of intelligence and some computer programs, and you can make it work cheap.

Mr. Pollock: That is more than Mr. Ballinger seems to be able to do.

Mr. Ballinger: I will save it for another day.

Mr. Faubert: Just very quickly. David, it is good to see you. I think country living agrees with you.

Mr. Hahn: It does, indeed.

Mr. Faubert: At least just getting out of Toronto maybe does. I just want you to know your comment on policy was not lost on this side of the committee. Mr. Wildman partly asked the question that I had, and that was the part related to wayside pits. You talked about wayside pits and their abuse and the option of putting not only a time limit but some quantitative amount on extraction. Were you thinking of any others? I know the bill addresses limiting the project life or appears to address that. Do you feel that is not covered as definitively as you wanted?



Mr. Hahn: I still feel that the nuisance value of a pit is rate of extraction times duration of period the pit is open. I think both of those things should be looked at and covered when a permit is issued.

Mr. Faubert: There were other comments made by earlier witnesses. They seemed to think also the number of permits that would be allowed per pit. Did you give any consideration to that?

Mr. Hahn: By number of permits allowed per pit, you mean—

Mr. Faubert: On a continuing basis.

Mr. Hahn: No, I think a permit is issued for a specific project, and when the conditions for that project have been fulfilled, I do not think it should be just relicensed again.

Mr. Faubert: You are basically saying you justify it on the basis of the project and, if justified, then it is limited.

Mr. Hahn: If and when that project was over, if there is a second project that again meets the test of justification, then it could be allowed again, but the test I would like to see is a chance at that point for public hearings or something; in other words, a real justification of the need for the continued operation.

Mr. Wildman: In terms of wayside pits, besides the question of duration and tonnage, as the duration in the bill and the amendments now is the duration of the project, do you think there should be some limitation on the duration of the site as a wayside site? In other words, if the operation is going to take more than two years or three years or something, should they be applying for a normal licence as a pit rather than a wayside permit?

Mr. Hahn: Again, I am not as familiar as you people are with the legislation and I am not a lawyer, but as a matter of principle, it seems to me that the very term "wayside pit" means a specific, temporary, not ongoing, continuing process.

Mr. Coffey: Just one last comment. I think one of the areas that caused me concern is that I bought land and when I made certain changes to my property, I had to apply to the Niagara Escarpment Commission and all that. I felt a certain protection because I was in the Niagara Escarpment area. Yet this gravel pit, which is about 2,000 feet south of me, now has no restrictions at all. So much for the protection of the NEC. This is eating right in. It is even polluting the water.

In my mind, it is operating completely out of control. We have weigh scales, we may have concrete—who knows what we are going to have?—and we are going to have a huge hole. We are taking out, my best guess is, double what the previous licensee was taking out, probably more than that and substantially more than what the new purchaser said he was going to do when he was trying to get the severance.

Mr. Wildman: Do you think the legislation should protect the municipality's right to have more restrictive controls?

Mr. Coffey: Definitely, but I also think the Niagara Escarpment Commission ought to sit up and do its job. I think they tend to take second place to some of the other departments or ministries.

Mr. Chairman: Thank you very much. We appreciate your input.

We are approaching 2:30 p.m. At 2:30, we had scheduled the Ministry of Natural Resources people to take the table to answer any questions of a specific nature that committee members had of them. I have at least one request. I believe Mr. Wildman indicated he wanted to ask Mr. Scott one question.

I have just asked the clerk if he would be good enough to contact my office and his office to make sure that Mr. Minns, the other presenter, has not contacted either of those two places, because those would be the numbers he would call. John has obviously been delayed for some reason that we are not aware of. I am a little concerned about that, but if we do not begin his presentation before 2:45 p.m., I think we will just have to ask him for a written submission. That is my proposal, and that will probably be satisfactory.

The reason for saying this, Rita—because one of the presenters is here and prefers not to take the responsibility of doing it—is that we had our schedule set. People have commitments in Sault Ste. Marie and places like that, and they have planes to catch. We had decided to finish up by 3:30 p.m., at the latest, this afternoon so that they can get out of the building by that time. That is the reason for that.

Mr. Scott, if you would take the table and field any questions that Mr. Wildman and others have, I would appreciate it.

Mr. Ballinger: Now that Mr. Scott has joined us, I will move we adjourn.

Mr. Chairman: I do not see a seconder, so I will ask Mr. Wildman to ask a question.

Mr. Wildman: We have had conflicting positions put before us, as you have heard, regarding the availability of aggregate related to the market in Ontario. Could you give us some idea of what the current situation is with regard to the demand for aggregate and the ability of the currently licensed operations to meet that demand?

Mr. Scott: Okay. In the past several years, the economy has expanded considerably. From our research and information that we have gleaned on the way things are going in Ontario from other ministries and other sources, it appears that demand is going to continue at a heightened rate for a period into the future. We have gone from somewhere in the order of 90 million to 120 million tonnes a year to—in the last year that we have data for at the present time; that is, 1987—186 million tonnes. That is a very dramatic increase. We have been going up at the rate of about 20 million to 25 million tonnes a year for the last three years, up to 1987.

That annual increase is largely being accounted for in what I would call maybe a 60-mile or 70-mile radius around Toronto. As I am sure everybody here is aware, it is largely that basically the Golden Horseshoe area is booming and at such a rate that it is requiring a lot more building materials to keep up with the demands in the economy.

We have witnessed—mainly in that particular area, but there are probably influences in other areas, such as around London and Ottawa; we just have not had time to look into the details of that—such an increase in demand



that most of the licensed properties in those areas, which were licensed basically through the grandfathering approach—when the Pits and Quarries Control Act came in back in 1971, they were already existing. They were basically granted a licence based on meeting certain requirements and criteria.

Those properties are running lower on material than what we would have anticipated a couple of years ago because of the increased demand in this particular area. There is starting to become a shortage and there will be greater demand for new licences in what I call the Golden Horseshoe area and in other parts of Ontario over the next few years because of this increased demand and the fact that there have not been that many new licences in this particular area coming on over the past 15 years.

Mr. Wildman: Would you characterize this as a potential problem or a problem now?

Mr. Scott: It is a problem now. I think we have heard about the municipality of Puslinch, where there are four different companies applying for licences at the present time. There are probably others that also have an interest in applying either in that municipality or in close proximity to that area.

We have similar situations in other parts of Ontario, in Halton region in particular, in Niagara and in the area east of Toronto, up in the Victoria and Peterborough county areas, which supply the east end of Toronto.

1430

Mr. Wildman: You are saying you have a problem in that you have a number of applicants who would like to develop sites and get licences.

Mr. Scott: Yes.

Mr. Wildman: My question really was, is the problem one of needing all of those licences for development?

Mr. Scott: Oh, I see what you are saying.

Mr. Wildman: In other words, do we have a shortage or is it just a situation where the operators or owners of aggregate sites see a potential for a market and so are wanting to develop them?

Mr. Scott: I think there is a shortage. I do not think most business people would invest the kind of money involved today in a licence unless they were fairly assured they were going to be able to market that particular product. Most of the applicants are people who are presently in the business and are trying to replace existing licences which are becoming depleted or are already depleted.

There are very few people I am aware of other than in the very rural areas where someone wants to get a small licence to serve as a ma-and-pa type of operation. They have a dump truck and a front-end loader and that is their livelihood completely. In a very rural area there are those types of people. In the more urbanized areas that type of person does not exist, because it is just too expensive a proposition for anyone other than the very large companies.

Mr. Wildman: Do we have many situations similar to the township of

Thurlow this morning, where there is in fact a company that has a licence, that is not using the resource but is holding a lot of property because potentially it may need it, want to use and market it in the future?

Mr. Scott: I am not aware of very many that have that large a resource area. There are a few farmers in rural Ontario who have licensed, for example, their whole property. There may be an esker going through the back, which is a mound of gravel that has been deposited there, and for simplicity in licensing, because there was a fence around their whole property, they licensed the whole property. They basically sell in the local area to some of their neighbours. There are those kinds of properties which you could consider to be in reserve, but they are in an area where there is very little demand for material, so that reserve does not really equate to being usable.

In the areas where the demand exists, those types of reserves are not very frequent and I do not really know of any to speak of other than where there is a presently operating property and they are still taking material off the property on a regular basis but happen to have a couple of hundred acres of reserves to supply their million-tonne-a-year production or whatever.

Mr. Wildman: I have one final question. How do you, as a civil servant responsible for identifying the resource sites and controlling extraction from them, calculate demand and need? Do you do it on a province-wide basis or do you do it on a localized basis? In other words, you just said there may be reserves in areas where there is not a large demand locally, but there are not the same kind of reserves in areas where there is a large demand. When talking about reserves, do you do it always on a localized basis or do you do it on a province-wide basis?

Mr. Scott: It depends on where you are. We do not normally look at it on a province-wide basis, because you cannot always make use of the material in a certain area and there are a very large number of different types of products that are used by the economy as well. You may have just granular A ground-up material that is going to be used for putting on your gravel township roads. Then you get into higher-specification uses.

Many of the pits that we have licensed in Ontario may have only sand in them, they may have only material that is acceptable for what we call granular A road material, just for putting on your township rural roads. Even though those properties may exist in a given area, there may not be material that is acceptable to make into concrete or asphalt, which is a higher-specification type of use, so you may have to have several different properties to fit all your different niches that exist out there regarding the demand-and-supply situation.

Mr. Wildman: Mr. Chairman, I have some other questions which relate to the wording of the bill. I do not know whether Mr. Scott would want to answer them or whether the gentlemen from the legal branch would be best to answer them, but I will reserve them for later.

Mr. Chairman: Do you mean later today or later in our deliberations?

Mr. Wildman: Later today. They are not too many, just one or two. But I do not want to hold up other members.

Mr. Chairman: Mr. Faubert has a supplementary to your first concern and then Ms. Bryden and Mr. Ruprecht have questions.



Mr. Faubert: Just to put it in the perspective of how you evaluate consumption or the actual rate of consumption, is this actually consumed aggregate or is this aggregate that is extracted, stockpiled in reserve and then sold for future sale?

Mr. Scott: No, the numbers I quoted were actual sales.

Mr. Faubert: These are actually consumed tonnages?

Mr. Scott: Yes, consumed tonnages.

Mr. Faubert: By all uses across Ontario?

Mr. Scott: Yes. They are tonnages that have been moved off that property where they are mined, to the consumer, whether it is on to a highway job or to a ready-mix operation or whatever the use is.

Mr. Faubert: I ask this in ignorance because I do not know what the granular operation really does. Do they usually extract to the depletion of the property or do they just extract it as they sell it? In other words, do they go ahead and go through that whole operation of extracting and washing and putting it out or do they do it only as they get orders in to sell?

Mr. Scott: No, under normal circumstances, they would go ahead and process a certain amount of material. They would have stockpiles there where you or I could go and purchase material from them. Or it might be their regular customers who might be taking it on a daily basis.

They would determine how much they were going to process in advance, based on their projection of the market that exists, when the demand might be and whether there are peaks and valleys during the year. Those types of considerations would be part of their analysis when they were determining how much in advance they would be mining.

Mr. Faubert: So this was part of the complaint that at one time it was almost a seasonal operation and now it is almost year-round. Is that correct? Are they doing concrete work almost year-round in southern Ontario?

Mr. Scott: That is correct.

Mr. Faubert: There are roads being built. There is a lot of construction being done.

Mr. Scott: That expanded even more so in the past few years than it did as recently as five or six years ago.

Ms. Bryden: I am very concerned, as I have been all along, about the amount that is left to regulation in this act, and also the powers that have been given to the minister to set aside various orders and to do it without any hearings or appeal from it.

I am referring particularly to subsection 68(1), which says, "The minister, if of the opinion that it is not contrary to the public interest, may, in writing, relieve any licensee or permittee from compliance in whole or in part with the regulations."

It seems to me that this is not the kind of power that should be put in an act of this sort. We are trying to regulate and control the licensing of

people operating pits and quarries, either on public land or on private land. I think that section should be withdrawn.

If there are reasons the minister should have some discretionary power to relieve a licensee, there should be a procedure set forth regarding the circumstances. There should be an opportunity for an appeal from the minister's decision or at least for notification of all the parties concerned. It appears from this that the minister can just simply, by a stroke of the pen, take over and change all the conditions of an application or a licence.

Mr. Chairman: Before Mr. Scott answers this, I think a comment by Mr. Scott would be inappropriate. You are into a policy area here, and unless you make specific requests of Mr. Scott of an information type, it is not appropriate for him to answer.

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Mr. Wildman: On a point of order, Mr. Chairman: It would be appropriate for the parliamentary assistant to answer this question. He is not here at the moment, but I am sure he will be back. I would certainly hope he would be able to explain why the ministry is drafting legislation in this way, to enable the minister to flout the act.

Mr. Fleet: The minister is following the act, not flouting the act.

Mr. Chairman: I submit that, with your concurrence, Ms. Bryden, we will hold this question in abeyance until the parliamentary assistant comes back and move to Mr. Ruprecht, who is next, unless you have another question.

Ms. Bryden: I just have one similar question, which perhaps we may want to hold in abeyance too.

Mr. Chairman: If it is a policy type of interpretative thing, I would appreciate it if you asked it of Mr. Ballinger, as opposed to Mr. Scott. You are putting him in a very unfair position here.

Ms. Bryden: Yes, I can understand that, but you are speaking on matters of administration and regulation. The other thing is, the regulation section is much, much broader, I think, than in the past. I would like to know what new clauses have been added to that. It seems to me you could just do without the act and do everything by regulation under this act. Can we get a reading on how many new sections have been added to the regulation section and were not in the old control act?

Mr. Chairman: Is that kind of information available, Mr. Scott?

Mr. Scott: If you can bear with me for one second—I do not have an answer prepared for that question, but I may be able to give you some clarification.

Mr. Chairman: While Mr. Scott is looking, I have been requested by the audio-visual people for you to move a little closer to the microphone and speak up a bit, Ms. Bryden. They are having a real problem. Ms. Bryden is relaxing a little bit in the middle of the corridor there.

Mr. Wildman: Just in relation to that, I wonder if Mr. Scott would be able to tell us—and if not he, then perhaps the parliamentary assistant—what criteria are being developed or have been developed by the



ministry for the application of the minister's discretion. In the background paper, and in the minister's leadoff statement at second reading, he said that the ministry was developing criteria for the application of the minister's discretion.

Mr. Cordiano: Is this not what is going to be in the regulations?

Mr. Wildman: That is exactly why I am asking in relation to my colleague's question about the regulations.

Mr. Fleet: But presumably you see regulations. I do not know how else you can see it. It is not—

Mr. Wildman: I am just answering, and Mr. Scott, I would think, might have some input into the development of the regulations, I suspect.

Mr. Chairman: If you feel uncomfortable with respect to the policy orientation of your answer, Mr. Scott, defer answering it.

Mr. Scott: Okay. I think I should defer at this point in time, for the simple reason that there have been quite a few briefs put before us, and some of the things we might ultimately want to create from the policy standpoint associated with the minister's discretion would have to be gone over with the minister himself. I really cannot get into that.

Mr. Wildman: That is exactly why we had not prepared our amendments yet. We wanted to hear all the presentations.

Ms. Bryden: That is also why we wanted a representative of the minister here right through the hearing.

Mr. Chairman: He'll be back.

Mr. Ruprecht: In the meantime, I want to follow up on a question by Mr. Wildman, and Mr. Faubert continued along the same vein. You obviously listened to the presentations of the advocacy groups of Ontario. What had to some degree puzzled me was the issue of one dramatic increase in price and cost they have talked about. I guess the point they are trying to make is that eventually there will be severe shortages.

On page 5 of their white paper, which I refer to continuously—that is their first presentation, I suppose—they say in the bottom paragraph, "More simply put, we are using aggregates at a rate three times greater than the amount licensed each year." To your mind, does that jibe with the—

Mr. Wildman: A lot of unlicensed pits.

Mr. Ruprecht: Probably. That is a good point. Does that jibe with the information given by Mr. Hope from Huronia, who had actually said that when he appeared before a certain meeting which he described—I guess it was a meeting of local area ratepayers—the ministry officials indicated that in terms of the amounts that were available, they were more than sufficient, and that the tonnage that was being used from these pits in those areas was more than enough, not only to cover Huronia but were also probably being used for other areas.

I am wondering, are we in a conflicting information situation here, or how would you co-ordinate those two approaches if there are any arguments to be made to even that out?

Mr. Scott: With pits and quarries, there is a little bit of a problem in interpretation of what you are actually hearing. That is part of the problem, because the real problem lies in the definition of what they mean by available material: whether it is under licence, whether the material in the pit can actually meet various types of uses.

I have seen information of that nature passed on to me before. I do not know anything about the situation Mr. Hope brought forward, but just using an example from my experience sitting in the office, getting a phone call from someone and hearing that same type of information, when I actually looked into it that particular township had lots of pits but they were all sand pits and we were quite justified in issuing a wayside permit. It was a reasonable thing to do, because one of the properties that was being considered for wayside had some stone content in it and so it could be used for road work, whereas sand in itself normally does not make good granular material for rural roads or any other roads. I just use that as an example.

To really understand the situation, you have to delve into it in great depth and you have to get all the factors and all the terms defined appropriately so that you do not compare apples and oranges. That is unfortunately what happens, because it is not a subject that is that familiar or that understandable to most people, and without that detailed background knowledge, you really cannot make a valid judgement on a lot of site-specific circumstances, comparing one property against another property, without all those factors being weighed.

Mr. Ruprecht: Yes, that could possibly be an answer, but I have one more question. When they say they are using aggregate three times greater than the amount it is licensed for, that can only come to one conclusion, and that is that you are running out sooner. They did not say in their presentation just when they make those projections for.

Mr. Scott: I am going to have to look at their submission in more detail. Hopefully, by the time we get to clause-by-clause we will have had a chance to review the various submissions and will have some better answers for you, because that is a new number to me. I am not saying I disagree with it; I am just saying I do not know any more about it than you do at this point in time.

Mr. Ruprecht: I am just saying that these have very serious implications, if those figures are correct. That would impact directly on probably your amendments and certainly what the government wants to do.

Mr. Wildman: It would also mean an awful lot of wayside operations and an awful lot of unlicensed operations.

Mr. Scott: I hope they are not unlicensed.

Mr. Chairman: I asked for the indulgence of Ms. Bryden and Mr. Wildman a few minutes ago because in my view there was a judgement policy call required of Mr. Scott in each of the instances. Could I beg your indulgence a bit more to rephrase the questions for Mr. Ballinger's benefit now, Ms. Bryden?

Mr. Ballinger: The tough part of sitting all day, Mr. Chairman, is that you cannot even be indisposed for a couple of moments.

Ms. Bryden: Assuming we accept your redefinition or your rephrasing, of course.



Mr. Chairman: You are going to have to re-ask the question because Mr. Ballinger was not here. Would you re-ask the question?

Ms. Bryden: Yes. I would like to know about section 68, which gives the minister complete discretion to change, rescind or vary any order, and there does not appear to be even notification of the people affected or any opportunity for public input. It seems to me this is the power to set aside the whole working of the act entirely on his own discretion. Should that power not be spelled out more precisely as to what circumstances it might be required in, and should there not also be some opportunity for notification and public input as to the effect of this on the people in the area?

1450

Mr. Ballinger: That relates to the regulations?

Ms. Bryden: No. These are the final residual discretionary powers that the minister has.

Mr. Wildman: Section 68.

Ms. Bryden: Subsections 68(1), (3) and (4). The municipality has to be notified, but if nothing is heard from it in 30 days he goes ahead anyway. If the public does not have to be notified, how does the minister decide what is the public interest? He is entirely the only one who makes that decision.

Interjection.

Mr. Wildman: Mr. Chairman, it might be helpful on the—

Mr. Ballinger: Just give me a second and I will sort out—

Mr. Wildman: Just while you are looking, when the backgrounder was released on the amendments and in the minister's opening statement—he referred to it on page 4 of the backgrounder—the minister referred to administrative procedures that would be developed. One of them dealt with the ministerial discretion.

It said the minister will develop "clear criteria for the minister to base his/her decision upon when deciding: whether to relieve any licensee or permittee from compliance in whole or in part with the regulation; whether to waive or reduce the rehabilitation requirements on crown lands; whether to waive site plan requirements for personal aggregate permits; to consent to transfer of a licence; whether an excavation is a pit or a quarry; whether to add, rescind or vary a condition to the licence at any time, or require the amendment of a site plan; when to require other information respecting the site plan and report; whether to accept a proposed amendment of a site plan by a licensee;" and "what changes to an established licensed operation are minor, and what changes are major, when notifying local municipalities of major changes."

That, I think, is part of what my colleague is referring to, that there is tremendous discretion in the act for the minister. The ministry said that it would be developing regulations and that it would also be developing criteria for determining when the minister would exercise the discretion on all of these very important issues. In fact, if you look at those issues—the long list that I read to you from the backgrounder—in effect what the legislation says is that the minister can waive the whole act if he wishes, in certain circumstances.

What we are asking is, why is that there? Why is there not proper provision for notice to the municipality and for municipal and local residents' input? What are the criteria that are being developed upon which the minister will exercise his very wide discretion?

Mr. Chairman: Mr. Scott, I believe, wants to react to part of that dissertation.

Mr. Scott: I think the elaboration that you provided has allowed me to say something which is not really a policy issue associated with the minister's office. I think, at the time when we had the discussion, when Mr. Ballinger was out, we were considering that you were talking about the minister personally making that decision, whereas in terms of the background information that was released at the time of second reading, the intent there—and maybe it was not clear—was that there would be a policy manual created within the ministry that would document all the different things that our field staff should be doing to ensure that there be consistency across the province and that the minister's view on how things should be handled and managed would be done in a co-ordinated, reasonable and proactive manner.

There will be such a document established, and we have already been working towards that goal. However, we have not finalized that information at this time. As a result of this format, here where you have heard from the various interest groups, undoubtedly there will be some changes in that policy document. We cannot really go into those details at this point in time because it will ultimately depend on what comes out in the final legislation.

All I can say is that our intent is to address all the matters that you have read off there, and probably other ones, in a manner that will give clear direction and a clearer picture of how we are going to do things in a manner that is going to be reasonable and not infringe on individuals' rights. We would not be promoting the changes to individual properties except under the types of policy criteria that were already established and approved by the minister.

Mr. Chairman: Mr. Ballinger, do you want to react to this question at this point?

Mr. Ballinger: I want to respond. It forms part and parcel of the discussion on the regulations as well. I think Mr. Scott is right, from the point of view that the submissions we have received—

I want to base it on my own experience in my own municipality for just a second. One of the problems with the current act, with the flexibility to discuss some things that change from time to time that are in the legislation but not in the regulations, is they never get changed. One of the advantages of the discussion even with the discretionary power as it relates to the minister is that will form part of that policy manual and it also becomes a discussion that is interministerial, between some of the other ministries.

We are sort of in limbo at this stage to give you an answer. What are those discretionary powers? What are we talking about? It certainly forms part and parcel of this whole public process at the committee level, but once we establish the clauses of the legislation, we can zero in more directly as it relates to the regulations.

Mr. Chairman: Ms. Bryden caught my eye first. Then Mr. Fleet.



Mr. Fleet: I have a supplementary to that point.

Mr. Chairman: I think hers was a supplementary to his point too or she would not have put up her hand.

Mr. Ballinger: I am going to get more coffee.

Ms. Bryden: To the parliamentary assistant, are we expected as a committee to consider this clause 68 and possibly pass it without having gotten those criteria that were promised, those guidelines the minister was going to bring forward to indicate in what kinds of situations you might be using that power? It seems to me that we cannot really send the bill back to the House until we do know, that we cannot complete the clause-by-clause until we have a clarification of section 68 and the promised outline from the minister.

I would like to ask Mr. Scott, is his office preparing some guidelines similar to what the minister promised in the background paper for the exercise of this discretionary power?

Mr. Scott: We had not intended on having them prepared, ready to do in the clause-by-clause. I would have to talk to Mr. Ballinger and the minister's office on that matter before we could really discuss that and I do not think we are ready for that type of discussion today.

Mr. Ballinger: I will respond because quite honestly, since this is the last day of the public hearing process, from my point of view—and this is of course the first bill that I have been responsible for taking through committee—I have every intention as the PA, once we have finished the public process, of sitting down with the minister and discussing what has transpired here for the last three days, so that we can have a more direct conversation among ourselves prior to our going into clause-by-clause in two weeks' time.

1500

Mr. Chairman: Could I interject for a moment, as the chair? The purpose, as I saw it, of this discussion of up to an hour was to get specific clarification based on the testimony of the last three days. In my view, we are getting into clause-by-clause a bit prematurely at this point. I think, in view of our time and everything, the committee should consider that.

I would like to move to Mr. Fleet's supplementary. We are going to be winding up fairly quickly here because Mr. Minns obviously has not shown and it is well past the quarter of the hour. I would appreciate everybody deferring any of these other questions of policy interpretation or that type of thing that could be done in clause-by-clause until that point in time.

Mr. Fleet: Actually, the chairman has just covered most of what I would have touched on, but one other thing I think is important to put on the record in terms of the evidence that we heard—and I have very clearly articulated views about when legislation should or should not have things that might sometimes show up in regulations. My views may not, frankly, represent what the ministry, or any given ministry, view is at all, but I think what we heard was evidence that there are some things that make a lot more sense to put in the regulations and it would not make much sense to draft particular parts of certain regulations or certain criteria until this committee and, ultimately, the Legislature exercise their judgement about what factors to put into the legislation.

I think we heard evidence that some people wanted certain things in the legislation and certain things in regulation, and there was a recognition that it becomes a judgement call. I look forward to us all exercising that judgement call on the clause-by-clause, but I do not think that necessarily you have to have all the draft regulations before you can even deal with the legislation. I think that would be getting things in reverse order.

I think what we want to do as legislators, and I mean as individual legislators, is make a judgement to the best of our ability about what things ought to be constrained in terms of flexibility, for whatever policy reason, and what things we leave to regulations, which have a separate process and for which a government will ultimately be answerable in public in a number of different ways. That is my sense of where we ought to be able to use what we have heard as evidence in our clause-by-clause review.

Mr. Wildman: I have one question, but I would like to respond just briefly, Mr. Chairman. I will not get into clause-by-clause discussion here.

It has been clear to all of us, and many of the witnesses who have appeared before the committee have referred to the fact, that there have been many years of discussion in relation to the need for changes to the Pits and Quarries Control Act and for controls on aggregate extraction in the province.

We all know that it has taken many years. It has taken the minister some considerable number of months to get this before the House. I am not being critical of him in that, but what I am saying is that we had lots of time. It is not that this was done in a hurry. I mean, we have had lots of time.

Our view is that if there were criteria to be developed, they could have been developed. They have had lots of time. I agree with Mr. Fleet's point of view that obviously regulations are developed to implement legislation, so therefore the regulations come after legislation. But the point is, in this particular bill, the way the bill is drafted, there is tremendous discretion for the minister to waive parts of the legislation in particular circumstances. That means that the regulations are going to be crucial for determining how this legislation is going to be operated by the people like yourself, Mr. Scott.

I think the criteria could have been developed. It is not as if we did not have time. We had lots of time. It would certainly be helpful to us to know, in determining whether or not we should be moving amendments to this legislation that will, in fact, limit that discretion, how that discretion was going to be used.

I have one other question and that relates to presentations that have been made before the committee.

Mr. Chairman: I submit the first dissertation was a comment, as opposed to a question. I did not hear a question.

Mr. Wildman: Okay.

Mr. Chairman: So this is the question, Mr. Scott.

Mr. Wildman: The question relates to presentations that have been made before the committee with regard to municipal input and control. Subsection 27(1) of the bill, which deals with wayside permits says, "The minister may in his or her discretion issue a wayside permit subject to such



conditions as are considered necessary and whether or not the location of the site complies with all relevant zoning bylaws."

Am I correct that one of the amendments introduced deals with that, as well?

Mr. Scott: We do have amendments, but I just cannot remember whether that specific one—

Mr. Wildman: There were only 17, in the words of the minister, that were substantive.

Mr. Scott: Yes, you are correct. There was a proposed amendment on that. It has to do with the amendments to the Niagara Escarpment Planning and Development Act regulations to allow for the possibility or the opportunity to have a development permit issued prior to a wayside permit being applied for in the Niagara Escarpment planning area.

Mr. Fleet: It is the 23rd page of the amendments, if that helps you.

Mr. Wildman: There are so few of them. I thought there was also an amendment to 27(1) which said that it "be amended by striking out 'subject to such conditions as are considered necessary...'"

Mr. Fleet: That is the 23rd page. Also on the 24th page, there are some additional—

Mr. Wildman: So the amendment would change the clause as it is now worded. There is another amendment which deals with, as you said, the Niagara Escarpment Commission.

Mr. Scott: That is right. Mine were in the wrong order. Unfortunately, the Xerox machine had—

Mr. Ballinger: You see, in the original act wayside pits were exempted from the provisions of the NEC. That now has been included. In fact, they must apply for a development permit.

Mr. Wildman: The point I am trying to make is that even with the amendments, the one related to taking away the phrase, "such conditions as are considered necessary," and the one that puts in, "compliance with Niagara Escarpment," still have the effect of saying that the minister can issue a permit if he deems it necessary and ignore municipal zoning bylaws.

Mr. Chairman: You have heard the question, have you, Mr. Scott?

Mr. Wildman: I am asking if that is what it means.

Mr. Chairman: For the record, would you introduce the other gentleman who approached the table, please?

Mr. Scott: David Searle is our legal adviser. He was involved with some of the legal aspects of the proposed act when it was being prepared.

Mr. Chairman: With the concurrence of the committee, I am going to rule that this is the last question because we have some housekeeping things to do.

Mr. Scott: In terms of wayside permits, the act does read that you would not have to have a mining zoning on the property to allow for a wayside permit to be issued. That is in keeping with the flexibility that is required because we have no control or no understanding of where a particular pit may be required to be developed for a road job.

Mr. Ballinger: Plus the fact that we are talking about a temporary land use, not a permanent land use.

Mr. Wildman: Well, we hope so. There are some other problems with the word "temporary."

Mr. Ballinger: There has been substantial discussion about that, Mr. Wildman. I think that we have all heard the discussion, but I think that is the important distinction. We are discussing temporary versus permanent.

Mr. Wildman: My concern is this: Perhaps, Bill, you can answer this, I do not know. Is this provision in the bill not in direct opposition to the mineral aggregate resource planning policy statement of your own ministry? That provides that a municipality may require zoning bylaw amendments for areas of existing development or particular environmental sensitivity.

Mr. Scott: There is a difference there, and I was also going to answer the question that was posed before and which I was looking for the answer for. The part about 27, we merely rephrased it and moved it to 30, and this was a result of concerns that there was confusion, too many things going together in the one section.

Mr. Wildman: So that was a housekeeping issue.

Mr. Scott: That was a housekeeping issue.

Mr. Ballinger: That was one of the insubstantial ones.

Mr. Wildman: Okay, but the point I am trying to make, and I will close off with this, is that we have had a promise from the ministry to develop criteria by which the minister will exercise the wide discretion that is provided for in the bill, but in the bill itself we have examples, one of which I pointed to, where the bill does not comply with a policy statement that the ministry has developed.

Mr. Chairman: I think that is a statement that we will accept as a statement and---

Mr. Wildman: It makes it very difficult for us then to have confidence that the minister's criteria that he is developing as a policy statement will be followed. They are not even following the statement they already have.

Mr. Chairman: That is another statement, and since we heard the last question some time ago, I am going to cut it off at that and thank you, Mr. Scott and Mr. Searle, for clarifying a few things.

#### ORGANIZATION

Mr. Chairman: The housekeeping task I would like to bring before the committee is the advice that the summary of events over the last three days by Jerry Richmond, the researcher, will be available the beginning of the week of



April 10 for the committee. I will ask the clerk to get those to the committee members as quickly as is possible for their deliberation.

The other thing is that I noted that one of the other committees apparently decided, and this committee can do the same—I am not suggesting this. What I am suggesting is that we meet regularly the week of April 17 from 10 until 12 and from 2 until 5, because in clause by clause we have to put parameters on it and those are the usual ones. I personally appreciate having a bit of time over the lunch hour to handle phone calls and that type of thing, so unless the committee instructs me otherwise, I will ask the clerk to give you notice of those hours from 10 until 12 in the morning each day and from 2 until 5 in the afternoon each day.

Mr. Wildman: We would even be prepared to sit until six, if you wish.

Ms. Bryden: Do we sit on Friday as well?

Mr. Chairman: No. We have set aside April 17, 18, 19 and 20, which, in my view, is Monday to Thursday. Those were approved by whoever makes those decisions and we cannot make the decision to go an extra day without specific approval.

What is the feeling of the rest of the committee about the hours? Do you want to go until six or do you want to cut it off at five and decide each day, or what do you want to do?

Mr. Wildman: It might be easier to play it by ear. We will see whether we need extra time.

Mr. Fleet: Why do we not start them at six, and then as we go we will know? Not that I am being cynical about this.

Mr. Chairman: On the notice we will show 10 to 12 and 2 to 5 and the committee can modify that if it sees fit during the deliberations.

Is there anything else that any member of the committee wishes to bring before the committee at this point in time?

The committee adjourned at 3:14 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

MONDAY, APRIL 17, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

Searle, D. G., Solicitor, Legal Services Branch

Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section

Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday, April 17, 1989

The committee met at 10:32 a.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: The chair recognizes a quorum. Thank you very much, committee, for your indulgence. Before we actually get to the clause-by-clause analysis of Bill 170, there are two or three things of a housekeeping nature that I would like to perform.

First, Jerry Richmond made this summary of the hearings available to all of us late last week and is here this morning ostensibly just to volunteer as you read through this. He has quoted it by sections. If in your work over the week you want to contact him on the intercom system, he is number 380 and his phone number is 5-0477. Really, this is meant to be a summary of both the written and oral submissions from the three days of hearings we had a couple of weeks ago.

The other thing I would like to do right at the outset, Mr. Scott, is have you introduce for the record all of the people who are at the witness table with you as experts. I would appreciate it. I think our clerk will want to introduce a couple of people at this table for everybody's benefit too.

Mr. Scott: Okay. I am Dale Scott. This is John Masham, our senior policy adviser, and this is David Searle, our legal adviser.

Clerk of the Committee: The gentlemen at the table here to assist us are Russell Yurkow, from legislative counsel, and Graham Cuthbert, also from legislative counsel.

Mr. Chairman: The purpose for having these gentlemen at the table is that if there needs to be legal interpretation, wording, that type of thing, they are here to assist us in that regard in the clause-by-clause. I wanted everybody to know why they were here and who they were.

Mr. McLean: It must be a real problem; you have three lawyers.

Mr. Chairman: Both the New Democratic Party and the government side have been good enough to make available to the committee a substantial number of proposed amendments. I think what we will do, with the concurrence of the committee, is just start right in at section 1, in the order I have received these, by number, and address them sequentially all the way through. Is that agreeable to the committee?

According to the standing orders, what I am supposed to do is call for any amendments at this point. You are supposed to call out all the numbers and I am supposed to mentally organize them, but since they are in excess of 90, I think it might be a little hard even for a math guy like myself to get that



kind of sequencing done. Are there any comments by anybody on the committee about procedure?

Mr. McLean: I just want to let the committee know that our critic, Mr. Pollock, is late. I understand that our people have gone through the amendments, they have gone through the agreed draft and have looked at the NDP amendments. We will work with those amendments to try to make the bill better.

Mr. Chairman: In that light, make sure you have the revised copy of Bill 170, because that is what we will be going by from the chair. The way you can tell it is different from all the other copies you have is that there are little arrows all the way through which depict where the government amendments are going to be. If I read it correctly, usually there is an arrow pointing down at the start, an arrow pointing up at the end, and if it is an insertion, there is an arrow pointing sideways. That is the coding.

Mr. Ballinger: On a point of order, Mr. Chairman: I tabled with you some additional amendments. Are they being printed now for the benefit of the committee?

Mr. Chairman: That was the next comment I wanted to make, to also make sure that you have the final copy of the NDP amendments, because I notice in the first two or three which we will be talking about today, there are a few changes. The government side has made some modifications starting at section 8, which we probably will not get to for a time. They are out being run off and the committee will have copies of those as soon as possible. So I think we have everything in hand to begin.

Mr. McLean: How many new amendments is the government bringing in this time?

Mr. Chairman: I did not count them. Mr. Ballinger, about how many changes are there?

Mr. McLean: How many new amendments are we to deal with?

Mr. Ballinger: About eight or 10.

Mr. Wildman: On behalf of the part of Ontario that is very dependent on the paper industry, I appreciate the work that is being done by this committee.

Clerk of the Committee: We recycle the paper.

Mr. Ballinger: There are 11, Mr. Chairman. Let me qualify that. There are 11 that are either rethought through by the government or else are in response to NDP amendments; a combination of both.

Mr. Chairman: As chairman, what I would like to comment on in that regard is that I think there have been a fairly large number of suggested modifications to this bill. I really think, in monitoring as chairman what has been happening over the last two or three weeks, that there has been a serious attempt by everybody to make the bill better. I hope that is the way the discussion will go, because in talking about a number of these things with Mr. Ballinger, I know they have been very receptive to the kind of suggestions the NDP, in particular, has made. It is going to be a better bill, assuming that a number of these initiatives are picked up on by the committee.

Is there any further comment before we begin?

Mr. McLean: I just want to let you know that I think we made some good, constructive criticism about the bill, also.

Mr. Ballinger: For the record, you might add.

Mr. Chairman: I in no way meant to leave you out of the equation. I assumed you were, as usual, talking in the background.

Section 1:

Mr. Chairman: What I propose to do, as I said, is to begin with subsection 1(1) and go through. In this particular case it is the section on definitions, so we will have to go through as the definitions appear in the modification of Bill 170 we are beginning to peruse. In the first instance, the definition of the word "aggregate," the NDP has suggested one change and the government side has also suggested an amendment thereto. I will entertain the official opposition's comment first.

1040

Mr. Wildman moves that the definition of "aggregrate" in subsection 1(1) of the bill be amended by striking out "dolomite" in the second line and inserting in lieu thereof "dolostone."

Mr. Wildman: This is not a substantive amendment. "Dolomite" is usually the word used for the mineral and "dolostone" for the stone. Since we are dealing with aggregate, if you look at most of the other types of aggregate included in the definition, we are talking about the stone, not the mineral, and that is the reason for the amendment.

Mr. Ballinger: Agreed, Mr. Chairman; there is no difficulty on our side. We are pleased to support it.

Mr. Chairman: If there is no further discussion, I will call this amendment. All those in favour?

Motion agreed to.

Mr. Chairman: Mr. Ballinger moves that the definition of "aggregate" in subsection 1(1) of the bill be struck out and the following substituted therefor:

"'Aggregate' means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock other than metallic ores, or other prescribed material."

Mr. Wildman: We are agreed.

Motion carried.

Mr. Chairman: The second item I have is with respect to the definition of the board. As it reads in Bill 170 now, it means the Ontario Municipal Board. I believe you have an amendment.

Mr. Wildman moves that the definition of "board" in subsection 1(1) of the bill be struck out and the following substituted therefor:



"'Board' means the joint board as defined under the Consolidated Hearings Act."

Mr. Wildman: If I can explain, arguments were made by witnesses before the committee about the need to expand the mandate of the board that would be involved in ruling on disputes. The consolidated hearings board allows not just for the Ontario Municipal Board, but also a representative of the Environmental Assessment Board to participate as a full member of the board and thus it would, in our view, make it possible for some expertise on environmental issues to be added to the expertise of the Ontario Municipal Board. Its expertise is largely in the area of zoning and municipal concerns, land use concerns and so on.

In our view, considering the nature of this bill and the importance of the aggregate resource and ensuring that it is developed in an environmentally acceptable way, we should have representation from the Environmental Assessment Board on the panel that would be ruling on disputes.

Mr. Ballinger: Mr. Chairman, I knew the first amendment was too good to be true. However, we do not agree. Currently, all planning matters and licence matters are heard before the Ontario Municipal Board. I wonder if we could just get Mr. Scott to—You will have to bear with me, folks. This is really my first opportunity to be involved in a clause-by-clause on behalf of the minister. I think it is important that, at this time, Mr. Scott highlight the procedure that happens today. During any OMB hearing, environmental evidence is heard and given, usually by both the proponent and the opponent. I wonder if Mr. Scott would not mind at this time just giving us a capsule of the normal procedure.

Mr. Scott: The normal procedure under the municipal board is that the various parties would let our ministry know that they are either not in favour or in favour of a proposed application. If there are people who are against the proposed application, it is sent to the Ontario Municipal Board at present.

We have had well over 100, probably getting closer to 200, individual pits or quarries go to hearings under the Ontario Municipal Board in the past 15 years. Based on the experience base that is in the OMB at the present time, we feel it has been able to address most of the issues we have run up against with pits and quarries. There are engineers and other people who have a knowledge of the broad base of what is going on in Ontario who are on the board and they seem to have been able to address the issue of pits and quarries relatively well, as we have witnessed in looking at the 100 or more different submissions we have had over the past number of years.

If there is an individual circumstance that comes up where more than one piece of legislation is involved, and I will go through a little bit of detail here, the OMB can look at different issues it has the right to deal with at the same time, and that would be anything to do with municipal planning as well as the Pits and Quarries Control Act and other issues of that nature. Normally, the OMB will hold a combined hearing which looks at the planning issues, the official plan, the zoning bylaw and the pits and quarries licence application at the same time.

If there were some other issue, if, for example, a property such as the Maple landfill site were being looked at for clay fill for the landfill, it could be put under the Consolidated Hearings Act by regulation, and that is indeed what we are doing at the present time with that particular

circumstance. That is a special case where it requires a little different type of approach because of the large number of different pieces of legislation that are involved in that issue. We can put it under that type of approach on a case-by-case basis where necessary.

Mrs. Grier: I do not have in front of me, unfortunately, either the Planning Act or the planning policy on aggregates. Can you tell me what definition of "environment" is used in either or both of those statements, and therefore what definition would apply at OMB hearings?

Mr. Scott: The definition that would apply would be the definition we are going to have for this particular piece of legislation.

Mrs. Grier: So if it was a hearing under this act, then the definition in this act would apply regardless of OMB's customary definition?

Mr. Scott: That is correct.

Mrs. Grier: Does the definition in this act differ from the planning policy under section 3 of the Planning Act?

Mr. Scott: No, not noticeably.

Mrs. Grier: Noticeably in that the definitions of the environment—

Mr. Scott: I do not have that in front of me at the moment. I would have to look that up and comment on that after I have had a chance to review it.

Mrs. Grier: I am just wondering why, if the purpose of this act is to protect the environment, it would not be almost automatic that a consolidated board would have hearings under this act.

Mr. Chairman: Go ahead. There is no need to make us interject all the time; just talk back.

Mr. Scott: Okay. This act does not solely look at the environment; it also looks at the issue of planning aspects. It is largely a mechanism for approving or disapproving a pit or quarry application, which has to have appropriate zoning to start with and appropriate official plan designation before you can get to the zoning. Those things are key components that have to be addressed, and those things also interchange quite a bit throughout this piece of legislation with how the regulations will pertain in this bill.

This is a regulatory act, but it follows after the appropriate zoning and official plan designation being in place, so we feel that the Ontario Municipal Board is the most logical group that would be able to understand the various issues that are associated with the zoning, the official plan and the regulatory aspects of the Pits and Quarries Control Act, not solely from the issue of the environment, as the Environmental Assessment Board might be looking at it.

1050

Mrs. Grier: As I read this new act, we have added the section under the purposes of the act to minimize adverse impact on the environment in respect to aggregate operations. But I take it from what is being said that it is not contemplated that expanded purpose of the act is going to be reflected



in any way in the kind of hearing board that is going to be dealing with applications under the act. I find that inconsistent.

Mr. Scott: We feel that with the Consolidated Hearings Act, if there was an issue that had to be dealt with in more detail, it could be put under that legislation, because that is what that act is all about, to do it on a specific basis where you can deal with it, just like the landfill site up at Maple.

Mr. Wildman: I understand what you are saying, but I must say that the suggestion my colleague was making regarding the need to recognize the importance of protecting the environment in the part of the bill that discusses what panel would be dealing with it does not in any way indicate that we are saying this should all be done by the Environmental Assessment Board.

What we are just saying is that there should be representation from the Environmental Assessment Board on the panel. Obviously, as you indicate, other sections of the bill deal with questions of official plans, municipal zoning and so on, so obviously we would also want expertise in that area. That is why it would make sense to have representation on the panel from the OMB.

What we are objecting to and why we moved the amendment is because we do not think it should be left solely to the OMB, but rather we need to have some representation from the Environmental Assessment Board.

I would just add briefly—I will not go into this at length and bore the members with things I have said before—but I do have a prejudice against doing things by regulation. I like to see as much as possible in an act, and I am sure the government agrees or it would not have moved so many amendments to this bill. It would like to get as much as possible into the act, so I think members of the Legislature should be overseeing and viewing this, rather than leaving it to hard-working and well-meaning bureaucrats who will draw up regulations. I do not expect Mr. Scott would want to do that.

Mr. Ballinger: I would hope not.

In closing, one of the problems with a bill like this—and I am sure Mr. Wildman and Mrs. Grier understand—is that there is such a broad spectrum in the nature of some of the applications, from the smallest mom and pop operations in the industry to the major international megacompanies. My municipality is Uxbridge. In any of the applications, whether they were for a licence issuance or an official plan amendment, all of those environmental concerns were addressed in the process.

Interestingly enough, there seems to be a fair industry out there now, between environmental consultants and environmental lawyers. They seem to appear at a good percentage of the hearings, giving evidence either in favour of or opposed to individual applications, and we believe that, before the Ontario Municipal Board, it is exposed to a full and fair hearing.

Mr. Chairman: Further comment? Are you ready for the question?

The motion was put by the New Democratic Party to change the definition of "board" from that involved in the preliminary draft here of Bill 170. Those in favour? Opposed?

Motion negatived.

Mr. Wildman: Actually, Mr. Chairman, we have an addition.

Mr. Chairman: This is what I was going to suggest. The NDP has a proposed addition, defining the brow of the escarpment. So I will take that one next.

Mr. Wildman: Again, to subsection 1(1), I move that subsection 1(1) of the bill be amended by adding thereto the following definition:

"Brow of the Niagara Escarpment" means the uppermost point of the escarpment slope or face.

Other sections of the bill deal with the Niagara Escarpment and the brow of the escarpment and we would just like to have a definition of it in the definitions part of the bill.

Mrs. Grier: Our definition is taken from the Niagara Escarpment Planning and Development Act.

Mr. Wildman: Yes; this is taken from the Niagara Escarpment Planning and Development Act.

Mr. Chairman: Comment, Mr. Ballinger?

Mr. Ballinger: The only comment I want to make is that I would like Mr. Scott to touch on the references that are made as they relate to the Niagara Escarpment and the terminology as it relates to natural edge. Mr. Scott, would you mind, please?

Mr. Scott: Yes. We are using the natural edge as it is in the Pits and Quarries Control Act and as we have been using interchangeably with the Niagara Escarpment Commission over the years. We are trying to keep a synonymous definition. We do not have a definition in here and we do not see it as being necessary at the present time. We feel that it is covered in other ways and with other arrangements within government, since the Niagara Escarpment Commission and other ministries—the Ministry of Municipal Affairs and so forth—have a relationship with us in co-operating and ensuring that there is synonymous thinking and viewpoints between the various parts of government.

Mr. Wildman: Can I ask, Mr. Chairman, could counsel for the ministry or legislative counsel advise us as to whether or not the definition we are proposing here is in line with the Niagara Escarpment Planning and Development Act?

Mr. Chairman: Counsel for the ministry or legislative counsel: who would like to go first?

Mr. Yurkow: I would refer it to counsel for the ministry.

Mr. Searle: Under the plan for the Niagara Escarpment Planning and Development Act, the term "brow" equals natural edge; and under the existing Pits and Quarries Control Act, the term "natural edge" is used in setting out the limitation of 90 metres from the natural edge.

Mr. Wildman: Why did you not define natural edge then in the act?

Mr. Scott: It is as determined by the minister, and we did not think



it was necessary. We do it in conjunction with the Niagara Escarpment planning and development plan along the escarpment and the act that covers that particular plan. We did not think it was necessary and that was the advice that we were getting from the various legal counsel and also in discussions. After the first reading—well, actually, before—and after the first reading of this bill with the Niagara Escarpment Commission, all parties felt that it was accurately and adequately covered at that point in time.

Mr. Wildman: I do not want to get into an argument, Mr. Scott, but is it not true that the Niagara Escarpment Commission asked for this change?

Mr. Scott: The only thing I can say is that we have had discussions with the Ministry of Municipal Affairs and the Niagara Escarpment Commission after it did, indeed, make a submission to us on this. Everybody at the present time has understood where we are coming from and we have understood where they are coming from, and they did not come forward after that discussion to request additional amendment to it.

1100

Mr. Wildman: It would be too flippant for me to suggest that you browbeat the Niagara Escarpment Commission.

Mr. Fleet: Indeed.

Mrs. Grier: I am sorry. I am not familiar with the Pits and Quarries Control Act wording, but is there is a definition in it of "natural edge" and, if so, what is that definition?

Mr. Searle: No, I do not believe there is a definition of natural edge, but there are presumably existing quarries that are operating in compliance with that requirement. These will be carried forward under the new act.

Mrs. Grier: But surely the purpose of this act—

Mr. Searle: To define it as something different from the definition of natural edge they are presently adhering to would be a difficulty, I think.

Mrs. Grier: But is not the purpose of this new act to open up a new era of control in which some environmental protection is expanded? The government amendment is that, "For the purposes of subsections (1) and (2)" of section 73 "the natural edge of the Niagara Escarpment is the natural edge determined by the minister," but there is no guidance given anywhere in the legislation as to how the minister is to arrive at that definition. It seems to me incumbent upon us to try to spell it out, so that not just the minister and the Niagara Escarpment Commission but the public reading the act would know at least within what parameters that natural edge might be defined.

Mr. Scott: I guess my response to that would be that we believe the natural edge as defined by the Niagara Escarpment plan and integrated into this legislation and with our minister's approval on an individual, site-by-site basis is the appropriate way to go. We were trying to not make it confusing, by not establishing a procedure other than going through co-operative efforts with the Niagara Escarpment Commission.

Mrs. Grier: So you are saying nowhere is there written down a definition of the natural edge?

Mr. Scott: The Niagara Escarpment Commission does have that in its plan.

Mrs. Grier: Then why could we not include in here "as defined by the Niagara Escarpment Commission in the Niagara Escarpment plan"?

Mr. Scott: That is because we are all one government and it is not necessary to take upon ourselves the onus of other ministries or agencies of ministries that are all in the same government. They and ourselves will work together to establish the one system that is acceptable for all of us in working with this new legislation.

Mrs. Grier: Then why, for example, do you define "highway" as "the same meaning as in the Public Transportation and Highway Improvement Act"? Are you not the same government?

Mr. Wildman: No, they are not.

Mr. Fleet: You guys tell them all the time.

Mrs. Grier: Try to work with two ministries and you find out how much they are in the one government.

Mr. Scott: With "highway" it was a slightly different issue, because we are dealing with many different things such as wayside permits and the definitions we were requiring were a little bit more detailed. Under the highway transportation act and so forth, you get a lot of different detail that we did not necessarily want to retain, so we wanted to make it a little bit narrower and a little bit more site-specific, especially for wayside permits. That was why we felt that we had to put that in there.

With regard to the edge of the Niagara Escarpment, we have had and we continue to have a very good relationship with the Niagara Escarpment Commission. We have meetings with them on a fairly regular basis to go over various concerns. We felt that there was no necessity, because their plan is binding. It is similar to a municipal official plan, except that it is at a higher level, and all the controls are there because of locational controls that have to be got or gained through the Niagara Escarpment Commission before we can go forward and issue a licence. Therefore, their natural edge or their brow is basically worked into our particular act based on the planning process, and that is why we did not feel it was necessary to do it again.

Mrs. Grier: If I could try one more, did we not at this committee some months ago learn that very few official plans have in fact been brought into conformity with the Niagara Escarpment plan, I think only three of 13 regional plans or something? Is there not a danger then that you will find yourself with different definitions of the natural edge and that for the purposes of protecting the escarpment under the aggregates control policy, it is even more essential that we have a common definition that people applying for a licence under this legislation can understand?

Mr. Scott: Even if the municipalities within that planning area do not or do have their plan in place, their plan will automatically have to adhere to and be representative of the Niagara Escarpment plan. It is, in essence, the superior plan, so if we are going to issue any licences in the Niagara Escarpment area, the company or individual would have to go to the Niagara Escarpment Commission and gain its approval on a locational basis to start with, before they can come to us or before we can issue a licence to them.



We feel that all the different controls that you are looking for are already in place through the planning process with the Niagara Escarpment Commission, and although what you are suggesting appears on the surface to be a concern, when you get right down into it, it does not appear to be a concern as far as we are aware and from our experience in dealing with various properties along the escarpment and with the commission over the years. It has not been a concern at all that I am aware of.

Mr. Wildman: I understand Mr. Scott's position, but I also understand the Niagara Escarpment's position before they got browbeaten by the minister. The fact is the Niagara Escarpment Commission asked for this change, and in no way are we trying to put anything additional into the act, we are simply trying to define something.

If you do not like the term "brow" and you want to use "natural edge," fine. We would be happy to have a government amendment to our amendment, but the fact is that we believe we must have a definition in this bill which makes it very clear that the Niagara Escarpment plan is the one that will be paramount in making decisions. To say that it should be left to the minister's discretion is one of our main concerns with this bill. To be quite frank, we want to limit the minister's discretion as much as possible.

Mr. Chairman: I will rule that as a comment that does not require an answer.

Mr. Wildman: No, it does not.

Mr. McLean: Mine is just along the same lines. I do not know whether Mr. Scott would care to comment or not, but what would be the reason that the Niagara Escarpment Commission would ask for that definition change?

Mr. Scott: I do not know what their thinking at the time was. In discussions with us, it appeared that they were misunderstanding the total impact of the legislation. It is fairly long. There are a lot of specific sections in this legislation, and for someone first reading it, they may not have understood all the different ramifications and how the planning process is paramount before you even get to the licensing process. Once that was explained, we believe that we clarified the concerns that they had.

Similarly, we had concerns voiced by many different parties about the legislation, as you are aware. We have met with various parts of government, and in many of those meetings, different parties might have liked to have had their name in print, but being one government, we felt that the act had to be made as compact and reasonable and all-encompassing as possible without being repetitive and covering all the different issues in several different ways when the government can handle those in an internal process or in the planning process, which comes first.

Mr. Ballinger: Obviously, we do not share the same concerns as Mr. Wildman. Generally, based on past performance, I think "the natural edge" is workable and is certainly acceptable to this side. That may not satisfy Mr. Wildman's concern about a clearer, more defined definition, but --

Mr. Wildman: We would just like to see you put "natural edge" in, that is all.

Mr. Chairman: If there are no further comments, I am going to call the question. Those in favour? Opposed?

Motion negatived.

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Mr. Chairman: There is one thing I erred on in the last section. I covered everything in "board" except assuming that the definition for "board" that is presently in the act is carried. I should be carrying these things definition by definition. I omitted to do that. I assume that "board" is carried?

Carried.

Mr. Chairman: There is no indication that "commissioner" should be changed. May I assume that is carried?

Carried.

Mr. Chairman: There is no comment with respect to "earth?"

Mr. Wildman: I do have a question. Who decided that earth does not include topsoil and peat? Surely, earth includes everything. You are not taking it in terms of the planet sense of earth.

Mr. Scott: Earth does include various things by various definitions. That is why we clarified it to correct the impression that we were looking after the Ministry of Agriculture and Food's jurisdiction of topsoil. Similarly with peat: We felt that at present it is being adequately administered, as most of the peat is on crown land, under the Public Lands Act. We did not want to have conflicting legislation creating confusion. That was the reasoning.

Mr. McLean: I am not clear on it. Why was topsoil not included in section 1?

Mr. Scott: Because we wanted to leave those with other pieces of legislation or with other ministries. We did not think it was our jurisdiction to take those at present, so we wanted to exclude them.

Mr. McLean: So a municipality or somebody who wants to take a lot of topsoil out of the municipality is not included in this act?

Mr. Scott: They are not included.

Mr. McLean: Should they not have been?

Mr. Scott: We felt it was most advisable to leave that with the Ministry of Agriculture and Food, which is responsible for the topsoils of Ontario, in essence.

Mr. Chairman: I do not hear any proposal for an amendment.

Carried.

Mrs. Grier: What about our next amendment on development?

Mr. Chairman: That is just what I was going to do. I just turned the page and saw that the NDP had slipped in a "development permit" definition here that I had missed. Alphabetically, we should be considering that now, so



I will entertain that motion.

Mrs. Grier moved that subsection 1(1) of the bill be amended by adding thereto the following definition: "development permit" means a permit issued under the Niagara Escarpment Planning and Development Act.

Mrs. Grier: Our reasons are that the government amendment to subsection 27(3) on page 24 of the new bill, which we are happy to see, includes the provision that: "Despite subsection (1), no wayside permit shall be issued for a site in the Niagara Escarpment planning area, as defined in the Niagara Escarpment Planning and Development Act, unless the location of the site complies with a development permit issued under that act." We think it enhances the bill to make that definition clear in the definition section as well as in section 23.

Mr. Ballinger: With the greatest respect, we do not believe the amendment is necessary. We believe it is amply covered at the bottom of page 4 under the definition of "zoning bylaw;" it leads over to the top of page 5. The Niagara Escarpment Commission is recognized under the definition of "zoning bylaw."

Mrs. Grier: I acknowledge that it could well be covered by that. My concern in the definitions is that there is a special definition of "permit" pulled out and highlighted as a definition, which means an aggregate permit or wayside permit. I think it is helpful to make it very explicit that development permit refers to a permit under the Niagara Escarpment Planning and Development Act.

Mr. Searle: I think that for the purposes of subsection 27(3), certainly, the permit is adequately identified as a permit under that act.

Mr. Yurkow: I would offer the view that the definition proposed is really redundant. It does not do any harm, but it is not necessary. It does not add anything.

Mr. Chairman: Are there any further comments or questions? Those in favour? Opposed?

Motion negatived.

Mr. Chairman: I think we discussed "earth." It was carried earlier, so we will note that and keep everything alphabetical. On the next section, I have two proposals for an amendment for the word "environment."

Mr. Wildman moves that the definition of "environment" as set out in the government motion be struck out and the following substituted therefor:

"'Environment' means,

"(a) air, land or water,

"(b) plant and animal life, including man,

"(c) the social, economic and cultural conditions that influence the life of man or a community,

"(d) any building, structure, machine or other device or thing made by man,

"(e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or

"(f) any part or combination of the foregoing and the interrelationships between any two or more of them,

"in or of Ontario;"

Does this mean the previous page can no longer be considered?

Mr. Wildman: No, they happened to be out of order.

Mr. Chairman: This is coming next.

Mr. Wildman: Yes. This is the definition under the Environmental Assessment Act. We have proposed that this act be brought in line with that act, because we see it as paramount to ensure that when we are talking about environment under this legislation, we are in fact looking at all aspects of the environment and the way a pit or quarry could affect the air, land or water but also all of the other aspects of environment that are taken in the definition of the Environmental Assessment Act, such as a building or structure, the social, economic and cultural conditions and the activities of people in the area, as well as plant and animal life.

We had discussions with the ministry prior to the introduction of the bill that if we were going to be moving amendments to the Pits and Quarries Control Act that would enhance the environmental protections, we should go to the Environmental Assessment Act definition. We are still persuaded that is the best route to go if we are indeed attempting not only to signal but also, in fact, to protect the environment.

Mr. Ballinger: I guess this is the amendment which separates the men from the boys.

Interjection: How about Ruth?

Mr. Ballinger: I apologize, Ruth.

On our side, we have had great discussions about this. It was obvious that a lot of the presentations that were before the committee centred on the concern for the environment. Our minister, as well, was concerned. One of the original statements within the backgrounder was the minister's change in focus as it relates to the definition of "environment."

Let me just explain some of the difficulties we have with this particular amendment. I would not call the bill itself a dichotomy, but it deals not only with the environment but as well with the economy.

We tried, in discussion, to recognize those aspects of the environment, as well as have some concern for the scope of the industry out there. It is really interesting. I think my township is a classic example: We have licences in the amount of 15,000 tonnes versus licences in the amount of three million tonnes. We have the mom-and-pop extractive operations as well as the major industry. There is nothing to prevent, on a major application, as an example, anyone from requesting the minister to bump up to an environmental assessment. That has happened many times in Ontario.



If this definition is hard and fast, then our concern, quite frankly, is that some of the smaller operators would not be able to survive. That may not solace someone whose sole argument is the protection of the environment, but it is a sensitive area that I believe the minister in his role has to have regard for. Knowing that anybody can request the Minister of the Environment to bump to an EA reinforces that this particular definition is not necessary.

Mr. Wildman: If I could briefly add: As members will remember, and I am sure as they go through the synopsis of the presentations made before us they will find, almost every group—not just environmental groups but ratepayers associations and so on—that appeared before the committee, other than the industry itself, requested this definition, or if they did not request it, when asked if they thought it was a good idea, concurred.

Interjection.

Mr. Ballinger: You were not supposed to remember that.

Mr. Wildman: I also want to make clear that in our view this is not just a one-sided definition. It is a definition, of course, that is aimed at protecting the environment in its widest aspects, but it also is not designed in such a way as to make it impossible to have development. What it is designed to do is to have environmentally sound development rather than environmentally unsound development.

It is not a definition which is designed to leave Ontario in a pristine state. It is designed to ensure that if there is development, it is done in such a way as to ensure that these aspects other than the natural environment—air, land and water—are considered so that it is certain that plant and animal life, the social, economic and cultural conditions of the community and so on are protected.

It is certainly true that it would make it perhaps a lengthier process for a developer, but it does not mean the development is stopped unless it can be shown, if there were hearings, that in some way the development was going to adversely affect the wider environment. It is not an attempt to stop development, but rather to protect and ensure that it is proper.

Mr. Ballinger: I just want to respond. Quite frankly, we think that is what Bill 170 is all about. We can go through here clause after clause that relate to rehabilitation of abandoned pits, certainly the signing, the notices; based on my own understanding of the industry and living in a community such as Uxbridge and being the head of a municipality that has been involved in redesignation of a nonrenewable resource, I consider that this act, when passed and put into focus and enforced, will do those necessary things that certainly have not been done in the past.

Again, on behalf of the minister, if there is an issue there that relates to a major environmental concern that has a major impact, then in fact the Environmental Assessment Act can be requested. We just do not happen to believe it should be incorporated as part of the act, because, again, for the aggregate-affected municipalities especially, this act is a good news story.

I am hoping that when all is said and done, with not only our own amendments but certainly the opposition amendments, we can all leave the table and say, "What we've done is something that is good for Ontario, not only from an environmental point of view but from a long-term understanding of a nonrenewable resource, and everybody will at least know what the rules of the

game are." We certainly are not in that position now under the old act.

Mrs. Grier: If this act is a recognition that the rules of the game have changed from what they used to be in the past, then it is even more critically important that the definition of environment be the broadest possible definition. I suspect all members of this committee have expressed their support for the Brundtland World Commission on Environment and Development and the integration of economic and environmental decision-making. We have said, as a motion of the Legislature, that was something which we supported in principle.

The government, by its appointment of a round table to begin to look at how the principles of the Brundtland commission can be put into practice, has certainly paid a great deal of lipservice to its support for that concept. Quite frankly, I see this act as one of the first tests of whether an act which, as the parliamentary assistant says, is an economic bill that is looking at how to control an industry while at the same time protecting the environment—If we really mean we want to protect the environment and that we are talking about sustainable development, then surely it is incumbent upon us to put the broadest possible definition of environment.

I point out that while you can in fact request a bump-up to an environmental assessment of any project, it is only a request. One can then have an environmental assessment advisory committee that can make a recommendation to the minister, and then the minister again has the discretion whether to accept that recommendation. The parliamentary assistant knows it is very far from being a sure thing that the request for a bump-up will be accepted.

I also want to make the point that in the narrower definition of the environment, either in Bill 170 as printed or in the Environmental Protection Act, the definition is very much of the natural environment. It excludes people. It excludes men or women.

Then we have the case of the school in Mono that is affected by a quarry right around it. The concern there was the protection of the built environment and the people inhabiting that environment, all of which are excluded by the definition the government seems to be supporting. Frankly, I regard the position taken by the government on this extremely disappointing, and I hope it will have second thoughts.

Mr. Chairman: All those in favour of Mr. Wildman's amendment? All those opposed?

Motion negatived.

Mr. Wildman: In that case, I have another amendment to subsection 1(1). The previous page, actually.

Mr. Chairman: Mr. Wildman moves that the definition of "environment" in the government motion be struck out and the following substituted therefor:

"'Environment' means the air, land and water or any combination or part thereof, of the province of Ontario."

Mr. Wildman: This is what is known as a fallback position. We would have preferred the Environmental Assessment Act definition, but in our discussions with the ministry officials and the minister prior to the



introduction of the bill, in coming to terms with the definition of environment, it was clear that the ministry's position was that it would prefer a definition which dealt with the natural environment. We were given to understand at that time that the Environmental Protection Act definition of environment would serve the purposes of both the government and those people who are concerned about the effects that quarry or pit development might have on their surroundings, whether it be in terms of polluting the land, air or water.

We expected when the bill was introduced that that, in fact, would be the definition used in this legislation. However, we found that the government's proposed amendment falls short.

If you note on page 2, it says environment means land, air and water and includes the use, condition and natural features of the site and adjacent lands.

That is our concern with the amendment as proposed by the government. It is very specific and deals with the natural environment, all right; but the natural environment meaning "land, air and water...of the site and adjacent lands." The Environmental Protection Act definition is a definition that is air, land and water all right, but in the province of Ontario; it is much wider.

We heard presentations before the committee from citizens' groups that were concerned not only about the immediate site and adjacent lands, such as the Mono situation referred to by my colleague, but we also had individuals who came before us who were concerned about the transportation of the aggregate from a pit or quarry and how that affected them. They were also concerned about the effects of wind, for instance in terms of dust and noise, which could affect more than just the site or the adjacent lands, and in fact might affect a number of areas not immediately adjacent to the site, along roads that lead to the site or a wider area where they are affected by the operation on an ongoing basis.

We prefer the EPA definition; if we cannot have the Environmental Assessment Act definition, then at least the EPA definition as we proposed to the government amendment.

Mr. Ballinger: We originally discussed a definition for the environment when the minister introduced first reading of Bill 170 in the House. Subsequent to the public hearings here and as well receiving amendments from the opposition—more specifically from Mr. Wildman who has really been instrumental in trying to strike a more definite definition of the environment—in the meeting I had on our side with the minister last week, after receiving Mr. Wildman's amendments, we agreed.

Quite frankly, I think that in the long run—again, I want to say to Mrs. Grier that this bill has come a long way from where it started 15 years ago when I was a member of the Ontario Mineral Aggregate Working Party. I was the appointment of the Association of Municipalities of Ontario back in those days. I was just a kid who had travelled across Ontario, mostly in the aggregate-affected municipalities, trying to understand whether, if we had a new legislation, it would address such things as the environment.

The minister, after quite a long discussion, agrees that the definition

of environmental protection certainly is a step in the right direction. I am more than happy to accept the amendment as proposed by the opposition.

Mr. Wildman: Thank you.

Mr. Fleet: I just want to indicate that I was concerned myself about the impact of the use of the word "adjacent" in the original proposal by the government. Mr. Wildman will recall that I asked a number of parties that came before us questions about the different definitions. I thought on reflection, and speaking for myself, that the use of the EPA definition was of significant assistance and is consistent with many other portions of the act where the purpose is one of protection of the environment. It clearly made a lot of sense to keep it consistent in this act with the EPA definition, so I will be pleased to support this.

Mr. Faubert: Just one other comment consistent with the statement Mr. Wildman made earlier: All groups that came before us did not prefer the EAA definition, but a number of them indicated they would accept the EPA one. They wanted some change other than that originally proposed by the government. On that basis, I think, all discussions centred on this. That is one I am quite prepared to support.

Motion agreed to.

Mr. Chairman: I am assuming, Mr. Ballinger, your amendment is now redundant. There was a government--proposed amendment. Is it necessary any more?

Mr. Ballinger: No, we agreed to accept the opposition amendment.

Mr. Chairman: Okay. For the next several definitions, there have not been any suggested amendments brought to my attention, so I will go through those. May I assume that the "established pit or quarry" definition carries? Carried. "Excavate"? Carried. "Final rehabilitation"? Carried. "Highway"?

Mr. Wildman: Just with the proviso that you should have a different definition of "highway" for northern Ontario since we drive on such lousy roads.

Mr. Chairman: Halton North may be, too.

Carried.

"Inspector"? Carried. "Land under water"? Carried. "Licence"? Carried. "Licensee"? Carried. "Management"? Carried. "Minister"? Carried. "Ministry"? Carried. "Operate"? Carried. "Permit"? Carried. "Permittee"? Carried. "Person"? Carried. "Pit"? Carried. "Prescribed"? Carried.

My next notice has to do with "progressive rehabilitation." It is a New Democrat amendment.

Mr. Wildman moves that the definition of "progressive rehabilitation" in subsection 1(1) of the bill be amended by inserting after the word "sequentially" in the second line the phrase "within a reasonable time."

Mr. Wildman: I think the reason for this is obvious. The bill deals with the need for rehabilitation. It would not be acceptable in our view, and I am sure in the view of the public and of the other members of the committee, for an operator to have a plan for rehabilitation and to give an indication at



the time that he or she receives a licence that he will implement this rehabilitation plan, and then just have it sit and whenever the inspector comes along, he is informed: "Well, yes, we are going to do that. We are going to live up to our obligations."

We think, obviously, that rehabilitation must be done within a reasonable period of time. In this case, the government members will note that we are indeed leaving it to the discretion of the minister to determine what is reasonable. We would not want to say "within a year," or "within two months" or whatever. We leave it to the minister to determine what is a reasonable period of time, since the type of operation, the size of the operation, the situation of the developer as well as the environment in the area may in fact influence what is reasonable in a certain case as opposed to another case.

Mr. Ballinger: In the interests of harmony, we agree. We think Mr. Wildman has captured it quite definitively and have no difficulty in supporting the proposed amendment.

Mr. Chairman: Further comment on the motion?

Motion agreed to.

Mr. Chairman: Should the section, as amended, regarding "progressive rehabilitation" carry? Carried. Are there no suggested amendments with respect to "public authority"? May I assume that is carried as is? Carried. "Quarry"? Carried. "Regional municipality"? Carried. "Regulations"? Carried.

My next notice, I believe, has to do with "rehabilitate" and it is a New Democrat motion.

Mr. Wildman: I do not know whether you want to carry clause (a), but this in an amendment to clause (b).

Mr. Chairman: Before we go to clause (b)—thank you very much, Mr. Wildman—may we assume that clause (a) is carried? Carried.

Mr. Wildman moves that clause (b) of the definition of "rehabilitate" in subsection 1(1) of the bill be struck out and the following substituted therefor:

"(b) is changed to another use or condition that is or will be compatible with,

"(i) the official plan designation of adjacent lands and the zoning of adjacent lands,

"(ii) the environmental condition of adjacent lands,

"(iii) if applicable, the intended use of the land as set out in the official plan, and

"(iv) the conditions attached to the licence or permit."

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Mr. Wildman: If I can speak to that, you will notice that clause (b) as is already printed in the bill says, "is changed to another use or condition that is or will be compatible with the use of adjacent land." Again, we have the problem with just dealing with adjacent land, but far more important than that is the question of how one determines what is compatible.

We believe we should put into the bill some definitions that indicate what criteria would be used by the government in determining what is compatible. Obviously, the intended use, according to the official plan and the conditions of the licence would impinge upon what is compatible because, hopefully, certainly with regard to conditions of the licence or permit, that would be taken into account when that is issued.

Mr. Ballinger: This is certainly an amendment that the government does not agree with and I personally do not agree with, especially from a planning point of view. I know what it is like, going back to my own experience in my own municipality, which is very heavily designated with aggregate extraction.

In the planning process as such, at the time of licensing, I think these conditions are too restrictive. In fact, I do not think that in the planning process you can predecide what the land use is going to be. With respect to adjacent land, what we have tried to say there is that once a pit is extracted, at least it should be rehabilitated and put back to its natural state in accordance with the neighbouring lands.

When you start talking about the OP and the use of the land in more general terms within that municipal boundary, I think you are predetermining the planning process at the stage of licensing. I think that is wrong. In fact, what usually happens under the planning process is that each application goes on the merits at the time. As an example, in rural areas a lot of rehabilitation is putting the land back into a natural rural state for agricultural purposes. As an example, if someone wanted to put a draft plan of subdivision on there for estate residential, then it would undergo its normal planning procedures through a normal application in a public hearing and elsewhere.

I just think these conditions are far too stringent and really set about to predetermine the end use. I do not think that is the purpose of it at all. The purpose of the act is to make sure that under rehabilitation, the land goes back to a reasonable state so that it is compatible with the surrounding lands. Anything other than that would normally undergo a normal application under the Planning Act for a redesignation or what have you. So we will not be supporting the amendment.

Mr. Chairman: Further comment? I call the question, then.

Motion negatived.

Mr. Chairman: Shall clause (b) carry? Carried.

The next item is a proposed amendment by the government side.

Mr. Ballinger: Where are we now?

Mr. Chairman: The definition of "road."



Mr. Ballinger: I will defer that to Mr. Scott to sort of qualify the definition. I am sorry; I have about 18 pages going here.

Mr. Chairman: You have to move the amendment, Mr. Ballinger.

Mr. Ballinger: I am sorry; I move it.

Mr. Chairman: Mr. Ballinger moves that subsection 1(1) of the bill be amended by adding thereto the following definition:

"'road'" has the same meaning as highway."

Do you wish to comment, Mr. Wildman?

Mr. Wildman: I will make a comment that, considering Highway 519 that I drove on yesterday in northern Ontario, if this were a bill under the jurisdiction of the Ministry of Transportation, I would be moving an amendment to recognize the reality that not only "road" but also "minefield" has the same meaning as highway, in the view of the government.

Mrs. Grier: Maybe it should be restored to compatible use.

Mr. Chairman: Further comment?

Mr. Ballinger: That gives us an opportunity there.

Mr. Ruprecht: Where is this Highway 14?

Mr. Wildman: Highway 519. It goes into a community called Dubreuilville from Highway 17.

Motion agreed to.

Mr. Chairman: Shall the definition of "road," as amended, carry?  
Carried.

Shall the definition of "site" carry? Carried.

Shall the definition of "Treasurer" carry? Carried.

All right. There are two indicated changes to the definition of "zoning bylaw."

Mr. Wildman: In view of the fact that our previous motion did not carry, I think we should withdraw our motion. We are withdrawing our amendment.

Mr. Chairman: You are withdrawing?

Mr. Wildman: Unless, of course, you want to reconsider the previous one.

Mr. Chairman: Mr. Ballinger moves that the definition of "zoning bylaw" in subsection 1(1) of the bill be amended by inserting after "34" in the first line "or 37."

Mrs. Grier: Just a question of Mr. Ballinger: What does section 37 say? What is the significance?

Mr. Scott: Those are the interim improvement bylaws.

Mr. Ballinger: Thank you.

Mr. Chairman: Is that all right, Mrs. Grier?

Mrs. Grier: Yes. Thank you.

Mr. Chairman: Any further comments? Those in favour? Those opposed?

Motion agreed to.

Mr. Chairman: Shall the definition of "zoning bylaw," as amended, carry? Carried.

I guess that finishes up the definitions, so we are now going to be addressing subsection 1(2).

Mr. Wildman: We have some serious problems with this section.

Mr. Chairman: Excuse me. You are talking about your proposed amendment 2(d)?

Mr. Wildman: No, I am not talking about an amendment. I am talking about subsection 1(2).

Mr. Chairman: Okay. Good.

Mr. Wildman: It states, "The minister may, in his or her absolute discretion, determine in cases where doubt exists, whether an excavation site is a pit or quarry."

As we have indicated in the past, we have serious problems with leaving so much to the discretion of the minister. If there is a problem with the definition of an excavation site as a pit or a quarry, then we believe the government should have been introducing amendments to make that clear in the bill. So we are not happy with this proposal that it should be left to the minister where there is doubt. We think it is incumbent upon the government, in moving legislation, to remove the doubt.

1150

Mr. Ballinger: I guess whenever you are talking about discretion of the minister, there is always going to be a difference of opinion. In this particular case, because it is a regulatory act, and I may want to defer to Mr. Scott who may give some examples of specifics—and I somewhat understand the concern of the opposition about the discretion of the minister—the minister has to have some discretion in making a decision or determination.

In this particular case, we think it is fair and reasonable. I do not imagine it will allay the fears of Mr. Wildman, but I think Mr. Scott might give us an example.

Mr. Scott: The reason we put that in there was some concern in parts of Ontario—I will not name the parts—where farm ponds are being used in conjunction with farming operations. However, they were getting out of hand as to size. Is a farm pond a farm pond or a pit if it is 1,500 feet long and 500 feet wide and just happens to go through the best gravel in that part of the province? There were concerns of that nature.

Also, if subdividers happened to have 25 feet of gravel on the property,



are they mining gravel or are they building a subdivision if they happen to take 25 feet of gravel off and sell it before they start building the houses? Those were the loopholes we were trying to capture, and we feel that we have to have that in there to stop what has become quite a large-scale problem for us in Ontario at the present time. We could not figure out any other way of controlling it.

Mr. Wildman: Could you not come up with minimum sizes?

Mr. Scott: In some areas, you are going to have fairly small pits, in certain parts of rural Ontario. A minimum size just did not seem to be realistic to us, because we have situations where you have got a fairly small ma-and-pa operation and then someone opens one of these types of operations down the road. Some of these operations would be larger than the ma-and-pa operation that we are trying to still keep in business through this legislation. We grappled with it and we tried various scenarios.

The only way we could see that we could deal with all the different types of circumstances we are up against across the province—and believe me, when you are dealing with a host of different types of concerns on private land, public land, land under water and all these other variations I alluded to a few minutes ago, you really do need that type of clarification in a broad sense like that so we are able to bring whatever type of legislation we think is reasonable to bear on those types of properties.

Mr. Wildman: So you would be going to the minister and saying, "What do you think of this farm as a whole?"

Mr. Scott: We would be going to the minister and getting him to make a determination on a specific issue, and some of them would require consultation between other ministries or other parts of government, such as the municipalities and county or regional levels, in certain circumstances. We have discussed this with various other ministries and municipalities. We have not heard any concerns. Indeed, this is a result of the type of concerns out there that the municipalities and other agencies have where they have felt we were not enforcing the regulations under our existing legislation on those loopholes as we should be, and we are trying to close the loopholes.

Mr. Fleet: I am kind of surprised that the official opposition does not recognize a provision that is essentially protective of the environment. The reality is if you do not put in a clause like this, you can get a developer, for instance, to challenge whether or not a hole in the ground constitutes a pit or a quarry and end up in a position where the ministry has to go to court to get a determination before the whole regulatory scheme of the act kicks in.

It is far better that we have a discretion with the minister. If somebody in the opposition wants to object to a case, there is a forum to bring it in. It is a lot faster than going to court, and you can always draw the attention of the ministry to review a decision that has been made. But at least this way there is a clear place where a decision can be made, the regulations can kick in and the person who is objecting, if he is a developer, for instance, is faced with the whole regulatory scheme that he has to comply with.

I am on record in other places as not necessarily being wildly in favour of open-ended ministerial discretion, but this is one case where I thought it made a lot of good sense, to protect the environment, to have this provision.

Mr. Wildman: I do not want to prolong this, but it is just that our concern with regard to ministerial discretion is not with the minister using it in the positive sense, as indicated by Mr. Fleet or Mr. Scott, but in using it the other way: to determine that what, by the most reasonable definition, is a pit or a quarry is in fact not a pit or quarry. That is what we are concerned about.

While I can understand the argument that this is to catch the developer who decides to mine 25 feet of aggregate from his site before he starts building, my concern is that there might be a situation where a minister, for whatever reasons, whatever pressures might be brought to bear, might exempt an excavation from the regulations under this act because he deems the area not to be a pit or a quarry when in fact he should.

That is why I would prefer to see minimum sizes, if you are attempting to catch, as Mr. Scott indicated, the person who is opening a pit but is saying: "No, all we are doing is bulldozing back material so that we can build some houses."

Mr. Chairman: Unless I hear an amendment, I am going to call the question. May I assume that subsections 1(2), (3), (4) and (5) carry? Carried. I think that is an excellent place to—

Clerk of the Committee: You have to carry section 1, as amended.

Mr. Chairman: My clerk tells me that now I have to carry all of section 1, as amended.

Section 1, as amended, agreed to.

Mr. Chairman: Now is an excellent time to adjourn for lunch. We will reconvene at 2 o'clock. Everything will be locked up over the lunch hour.

The committee adjourned at 11:59 a.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

MONDAY, APRIL 17, 1989

Afternoon Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)  
VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)  
Bryden, Marion (Beaches-Woodbine NDP)  
Callahan, Robert V. (Brampton South L)  
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Cordiano, Joseph (Lawrence L)  
Cureatz, Sam L. (Durham East PC)  
Fleet, David (High Park-Swansea L)  
McLean, Allan K. (Simcoe East PC)  
Ruprecht, Tony (Parkdale L)  
Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan  
Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden  
Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz  
Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section  
Searle, D. G., Solicitor, Legal Services Branch  
Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section  
Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday, April 17, 1989

The committee resumed at 2:11 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Section 2:

Mr. Chairman: The chair recognizes a quorum. Picking up from where we left off this morning with respect to Bill 170, we are beginning part I, general, section 2. I have been advised by the NDP that they have a proposed amendment to clause 2(d), so we will address clauses (a), (b) and (c) and call that amendment. Is there any comment with respect to clauses 2(a), 2(b) or 2(c)? All agreed?

Can we have your amendment, then, to clause 2(d), please?

Mr. Wildman moved that clause 2(d) of the bill be struck out and the following substituted therefor:

"(d) to protect and preserve the environment and to ensure that the adverse impacts of aggregate extraction, processing and transportation are minimized; and

"(e) to maximize the long-term benefit to the people of Ontario in respect of aggregate operations."

The reason for the change in the wording of clause 2(d) is that as we read the government's proposed wording, it appears to be less positive than we would like it to be in terms of protection of the environment. Clause 2(d), basically, as it is presently worded in the bill, says, "to minimize adverse impact on the environment in respect of aggregate operations," which we could agree with, but I think it would be more in keeping with the thrust of the bill and the purpose of the legislation to put it in more positive terms, that is, rather than minimizing adverse impacts, to say that we intend as a jurisdiction to protect and preserve the environment and to ensure the adverse impacts are minimized.

That is the reason for the change in the wording of clause 2(d). I do not think it really is in any way contradicting what the government has proposed. Rather, it is expanding it and putting it in a more positive sense.

On clause (e), the additional one, if you would like me to speak to that now, I would say the reason for the addition is that again, in a positive sense, we are saying that we want to maximize the benefits to the people of Ontario in respect of aggregate operations rather than simply minimizing the adverse impacts of those operations.

Mr. Ballinger: I just wonder if we can get Mr. Scott to touch base on clauses (d) and (e), please? We find those particular amendments, I would not say too restrictive, but certainly tough to work with.

Mr. Scott: In terms of the purpose of the act, we were looking at



trying to capsulize the essence of maybe the three or four key things that are in the legislation that we thought should be up front to give direction throughout the act as to what it was all about.

We have chosen the wording fairly carefully in light of the various different types of properties that we deal with across the province. We felt and we have looked at it very carefully that the wording we have put in here for clause (d) fit in an appropriate context with clauses (a), (b) and (c).

We felt that we must focus not only on the after-use and so forth but we must be looking at it in a very integrated manner and that was the reasoning we used for putting "to minimize adverse impacts on the environment in respect of aggregate operations."

We chose the wording to a large degree because we felt, with an aggregate operation, there is no way you can basically preserve the environment because you are going to be digging a hole in the ground and that is where we got the "minimize adverse impacts" from. If you were to take the dictionary definition of "preserve" it means to leave untouched, undisturbed, unchanged.

Mr. Wildman: Like the former government.

Mr. Ballinger: Another direct hit.

Mr. Scott: With that in mind, we have had detailed discussions with other parts of the government at the present time, other ministries, to come up with the wording that we thought best exemplified what this legislation was trying to achieve, understanding you are digging a hole in the ground.

That is basically where we have come from and if we were to go along with the proposed amendment to clause (d), we would have some concerns that it would adversely impact the licensing process and would not give clear direction as to how you would overcome that "preserve" context where you were not supposed to be disturbing things. You cannot restore something back to its identical configuration when you have dug a hole and shipped the material off the property. That is why we feel "minimize" is the only word that fits the bill for this particular use.

Mr. Fleet: I would like to comment particularly on clause (e) of the proposed amendment. I am sure that Mr. Wildman is still attempting to assist the paper industry by having this added but it seems to me to be a classic case of gilding the lily. Why would you not be able to advocate that every purpose of every act, no matter what it was for, was to maximize the long-term benefits of the people of Ontario?

It seems to me that does not really convey anything specific to this act, other than talking about aggregate operations at the end of that. It really does not advance the function of the act and it does not assist a judge, which is really the reason you set out the purposes as largely to assist the public and a judge in some court case. It does not tell him or her anything about how they are supposed to deal with the rest of the act.

I, for one, thought the proposed purposes that are set out elsewhere, clauses (a), (b), (c) and (d) as the government is proposing, were quite specific and covered, with quite a bit of care, all of the kinds of activities that take place. What we are really looking at here is a regulation of an activity and that is what the purpose of the act is about.

1420

Mr. Wildman: I appreciate the comments made. Mr. Scott's explanation seems basically to be summed up in the phrase that the government is in this wording "for purposes of the act" attempting to minimize the adverse impacts on licensing, which are actually Mr. Scott's own words.

I do believe that the proposed amendments that we have are in line with and can be integrated with the other (a), (b), (c) purposes outlined in the act. The amendment has been proposed by witnesses who came before the committee.

In response to Mr. Fleet, I understand what he is saying, but I would say that there are two purposes to this act. He said that the bill is a regulatory bill that basically regulates an activity; which is certainly true, but it regulates it in a particular way. It regulates it in a way to protect the environment. I do not think our amendment in any way contradicts that. As a matter of fact, it complements and expands it.

The other purpose of the bill, though—and I think the ministry would agree—is to make aggregate resources available because of the need for aggregate resources. I think our suggested clause 2(e) does in fact do that. It talks about the benefit of aggregate operations to the people of this province, and it talks about it in terms of long-term benefit, particularly because we recognize that it is a finite resource; that unless we look at the long-term need and regulate in such a way to ensure that we meet that need in a responsible way, we may find ourselves, at some future date, short of aggregate.

Mr. Fleet: But that is what clause 2(a) is for. It says, "to provide for the management of the aggregate resources of Ontario." What clause 2(e) says is that we want to do good things.

Mr. Wildman: Right.

Mr. Fleet: That is all it says, and I am saying that is surely redundant to any piece of legislation. Every piece of legislation is done to maximize the long-term benefit to the people of Ontario, in the view of at least a majority of the Legislature. I do not know why you gild the lily at this point. Why add that there? I appreciate the good intent, but I do not know that in fact advances the act at all.

Mr. Wildman: Okay. The other thing, though, I do want to emphasize in regard to clause 2(d)—Just in response, Mr. Fleet, just now—

Mr. Fleet: I could not resist.

Mr. Wildman: The comment about management is accurate. I would just like to have something, if not in a new clause 2(e), then in addition to clause 2(a), to explain how we are going to manage in the purpose, because you can manage in many ways. You can manage both responsibly and irresponsibly.

Mr. Fleet: We only do the first one.

Mr. Wildman: Yes. Having said that, there is an important addition in clause 2(d)—

Mr. Ballinger: Ye who have no faith.



Mr. Wildman: I have learned to bolster my faith with good works.

I would also say, on clause 2(d): You note that it says in the bill "aggregate operations." I honestly think that is too restrictive. What does "operations" mean? Perhaps the legal people here can explain that. Does "aggregate operations" mean not just extraction, but also processing and transportation; that is, not just digging the hole Mr. Scott was talking about a little earlier, but processing, running the crushers and then using the trucks to transport the processed aggregate to market?

Mr. Scott: Yes. Let me just check. I will go back to the word "operate."

Mr. Wildman: Yes?

Mr. Scott: That word is defined, "when used in relation to a pit or quarry, means 'work' and includes all activities associated with a pit or quarry that are carried out on the site."

Mr. Wildman: Okay. See, that is the problem. Transportation to market is not carried out on the site. In fact, the processing may not be carried out on the site. In most cases it is, but it may not be.

We believe that one of the possible adverse effects of a pit or quarry operation is the number of trucks going in and out, and along the municipal roads, to get the product to market. That is why we have included that in our amendment, because the noise and the dust that can be associated with an operation may be associated with the trucking of the aggregate as much as, or in some cases—depending on where the person or people may live—have more effect than the actual crushing or extraction.

Mr. Fleet: How can these trucks go on and off the site without being on the site?

Mr. Wildman: Well, that is my problem. If the legal people can advise me that the definition of operate where it says, "on the site"—if a truck is coming off the site and they are operating, just for the sake of argument, from 6 a.m. until 9 p.m., you might say that we are going to regulate the operation on the site by saying, "No, they can only operate from 7 a.m. until 5 p.m." Does that then prohibit the trucks from trucking on the roads off the site after 5 p.m.?

Mr. Scott: Maybe I can add some clarification there. We have always viewed anything to do with pit or quarry as being within our realm of jurisdiction. We have conditions on licences associated with truck haul routes and truck traffic. That is one of the things we assess when we are making a decision on licensing. It is already in the act in other areas.

The report requires that detailed type of information. That was not meant to be excluded and indeed, in talking with Mr. Searle, we do not believe it is excluded. We believe it is part of the normal operation because throughout the act it is covered in many areas.

So, in respect of aggregate operations, the act would and should include that and we have never disputed that. When we look closer at the act and the various parts where it talks about truck traffic, the influences, the power of the minister in licensing, the power in putting conditions on licences and the requirements in the report for that type of information, we believe it is covered.

Mr. Wildman: Well, we would just like to make it explicit. I do not think I need to add anything more to that argument.

Mr. Chairman: Can we call the question? Those in favour of the amendment? Those opposed? The amendment is defeated.

Motion negatived.

Section 2 agreed to.

Section 3:

Mr. Chairman: Moving on to subsection 3(1). I am assuming that it will carry as I have not been advised of any possible amendment. Carried. And in subsection 3(2), clauses (a) up to and including (k), I have not been advised of any potential amendment. I am advised that in clause 3(2)(l) there is an amendment on the government side.

Mr. Ballinger: For the benefit of the chairman and the clerk, I am pleased to move that clause 3(2)(l) of the bill be struck out and the following substituted therefor:

"(l) consult with ministries, municipalities and agencies."

Mr. Chairman: Correction—I think that says 3(2)(l), not 3(2)(1).

Mr. Ballinger: I cannot even read my own writing. I apologize, Mr. Chairman. I was doing so well, too.

Mr. Chairman: Well, it was an improvement on what you tried to do this morning.

Mr. Ballinger: On a point of order, quite frankly Mr. Chairman: I did not realize you were going to make me move all of the amendments in having to recite them verbally. I am pleased to do that.

Mr. Chairman: I am not making you do anything. It is just that if you want this thing to go through, you have to do it in a certain way according to the standing orders.

Mr. Ballinger: I appreciate that.

Mr. Chairman: Mr. Ballinger moves that clause 3(2)(l) of the bill be struck out and the following substituted therefor:

"(l) consult with ministries, municipalities, and agencies."

Would you like to comment on clause (3)(2)(l)?

Mr. Ballinger: I think it is quite self-explanatory. I think in just adding "municipalities" it reinforces notification.

Mr. Wildman: Mr. Chairman, we do not have any objection to the wording as it is, but we do not think it goes far enough in two ways. Number one, you will note that the beginning of section 2 says the minister "may." We believe the minister "should" and it would be preferable for it to say "shall." Number two, we would like to know what exactly is meant by consult



and when this would happen.

For instance, it would not be very beneficial in our view, as is proposed in other parts of this bill, for the minister to consult with the municipalities after the fact. That is provided in other sections of this bill. It would seem far more acceptable for the minister to consult with the municipalities and the agencies prior to—

1430

Mr. Ballinger: Have you not seen our proposed amendment on the transfer of licensing? It is revolutionary.

Mr. Wildman: If that is what is intended, that would be acceptable and we are certainly not moving any amendment to this. I would just like to flag that we believe the minister should consult, not just perhaps consult, and that it should be prior to rather than subsequent to making a decision in his administration of this act.

Mr. Chairman: Further comment?

Mrs. Grier: Before I comment, can I ask about the proposed amendment that was referred to? Which one is that?

Mr. Ballinger: Clause 1.

Mrs. Grier: The one about—

Interjection: The other one.

Mr. Ballinger: I am sorry. It is in the government-proposed amendments. It is on the transfer of the licence.

Mrs. Grier: So it is one of the ones we got this morning.

Mr. Ballinger: Yes.

Mr. Wildman: Is it section 18?

Mrs. Grier: Or section 20.

Mr. Wildman: Or section 20? Which one?

Mrs. Grier: Yes, 18.

Mr. Ballinger: It just reinforces the amendment about consulting with the municipality. That is an entirely new amendment, never, ever been—

Mr. Wildman: It says if you are served with a notice.

Mrs. Grier: That is only on transfer of licences.

Mr. Ballinger: Yes.

Mrs. Grier: Would it not then make sense to have the same provisions and time frame in the general administration of the act, or is that already provided for?

Mr. Wildman: No, it is not.

Mr. Ballinger: Mr. Scott, maybe you would not mind giving the breakdown of the normal procedure. When we were discussing the part on the transfer of the licence, the normal procedure was that after the fact, which sort of reinforces the point Mr. Wildman made, a municipality would be notified. When we went through the discussion in this particular case as it relates to time frame, we discussed what would be a reasonable amount of time a municipality would receive notice from the minister and could respond accordingly.

You see, each section is different, as you might be aware, and each part of the process is different. Mr. Scott, you might sort of run down the---

Mr. Scott: Throughout the act, there are various places---we use the word "may" here because this list is so all-encompassing. Throughout the act, like transfer of licence, we have specifically gone forward and indicated that we shall consult, we shall give 30 days for comments, we shall do such and such. That is why it is general at the first here in subsection 3(2). We felt it was pertinent to be general here because we get into the specifics later, and that was the reasoning behind that.

We wanted to insert the word "municipalities" here because we felt---it was an oversight. It was intended all along, but for one reason or another, it was not itemized and we felt it was necessary to itemize it. This legislation is going to be working in close co-operation with the municipalities, so the word should be there.

Mr. Wildman: I think that answers my concern. Our concern was that it simply not be a sort of notification of something that is a fait accompli, but rather be true consultation.

Mr. Chairman: Any further comment? The vote, then. Those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Shall subsection 3(2), as amended, carry? Carried.

Section 3, as amended, agreed to.

Section 4:

Mr. Chairman: The next proposed amendment is in section 5. Is there any comment on section 4?

Mrs. Grier: I have a question. I noticed some of the briefs talked about the qualifications for inspectors, and I see, really, no mention of that in the bill. The definition of "inspector" is merely somebody so designated by the minister. Are there any standard qualifications?

Mr. Scott: Yes, there are. People who are hired as inspectors are graduates of community colleges such as Sault College or Sir Sandford Fleming College that specialize in resource management, or they are university graduates in such fields as geography, biology, engineering, whatever. It depends on the individual program they went through and the desire to get into this type of work.



After they have been hired by us, we have a full range of different courses to bring them up to a relatively constant level of experience and knowledge base. This would include an enforcement course. On an annual basis, we have a seminar of two days' duration to basically get our people up to date on what has been going on and what they should be doing. There are other courses beyond that, as well.

Mrs. Grier: Thank you.

Mr. Chairman: Any comment?

Section 4 agreed to.

Section 5:

Mr. Chairman: Shall clause 5(1)(a) carry? The proposed amendment is in 5(1)(b). Carried.

I call for your amendment then to clause 5(1)(b).

Mr. Wildman: The amendment also would apply to subsections 2 and 3. Do you want me to move them all at once?

Mr. Chairman: You could, tentatively. We will see how it goes.

Mr. Chairman: Mr. Wildman moves that subsection 5(1) of the bill be amended by striking out clauses (b) and (c) and the following substituted therefor:

"(b) all private land;" and

Mr. Wildman further moves that subsections 5(2) and 5(3) be struck out.

Mr. Wildman: If this amendment to 5(1)(b) is carried and clause (c) is also struck out, then the other two amendments would follow from it.

Mr. Chairman: Do you want to talk a little?

Mr. Wildman: Yes. This, as you know, and as the members of the ministry staff know, is of particular concern to me. This has been something I have raised on a number of occasions and many people in the province are very concerned about it. If indeed this is a good piece of legislation, and if it does maximize the benefits of aggregate extraction to the people of the province and at the same time protect the environment and provide for rehabilitation of sites, then in my view it should apply to the whole province.

If it is not a good piece of legislation, then by all means I do not want it to apply to my part of the province. Since the government is concerned and determined that this is in fact good legislation, it does not make sense to me that we should limit this in the way the Pits and Quarries Control Act was limited.

It seems to me the argument has been raised by members of the ministry that they are in charge of crown land in the province and administer the extraction of aggregate, as well as other resources from crown land, so therefore it is not necessary to have crown lands in northern Ontario designated under this act.

I might have some argument with that, but I will accept it, that in fact the ministry is responsible for administering crown lands. I would hope the ministry would follow the same kinds of procedures for crown lands as it would require for private lands that are designated under this act.

1440

That does not deal with the question why private lands in northern Ontario should not be governed by this act. If private lands in your part of the province, Mr. Chairman, should be covered by this act, then why not in the north?

It has been argued that many parts of northern Ontario are unorganized municipally and thus do not have the same kinds of zoning controls or official planning designations that municipalities would have for land use. In my view, that makes it all the more reason to have this act apply, because if you do not have those kinds of protections in unorganized areas, it does not necessarily mean we are talking about uninhabited areas. There is one unorganized area north of Sault Ste. Marie in my own riding that I will use as an example, which has approximately 6,000 seasonal residents and 5,000 full-time, permanent residents. You are talking about a sizeable community that does not have municipal organization.

The Minister of Municipal Affairs (Mr. Eakins) has attempted to regulate growth in that area by putting a ministerial order on the area, but it does not have the same kinds of local controls, with local people running the show, that a municipality would have. It seems to me we should be ensuring that private lands in northern Ontario, in both the organized and unorganized areas, are governed by this act.

I realize that in his presentation to the Legislature, the minister said the ministry would be encouraging municipalities in northern Ontario and other parts of eastern Ontario that are not now designated to apply for designation, and they outlined a number of areas of the province that they would like to see over the next two to three years as first steps towards designation of a larger area. One of those was the North Shore area between Sault Ste. Marie and Sudbury. I would welcome that, but I do not see why it should be done by regulation or why it should be postponed.

There is a municipality immediately east of Sault Ste. Marie and the Garden River Reserve in my riding where there have been innumerable problems with a number of aggregate extraction operations. The municipality, the small township, does indeed have an agreement with the developer, the pit owner, for the operation and ways of operation, the number of hours in a day, the times of the year, the amount of noise, dust and so on, but frankly, that agreement and the guidelines and regulations of the municipality are almost unenforceable. When the operator, for whatever reason, does not follow the agreement and extends his hours of operation or produces a great deal of dust, the residents of the area seem to be at a loss how to get it enforced.

They have asked the Ministry of the Environment to come in and talk about noise and dust regulations. That has not been successful. They have called in the Ontario Provincial Police on occasion. That has not been successful. They even, at one point, got the mining inspector from Elliot Lake to come and inspect it. He agreed with them that the site was unsafe but then informed them that he did not have jurisdiction to do anything about it.

They called the Ministry of Natural Resources. The Ministry of Natural



Resources said, "Well, you know, this area isn't designated under the Pits and Quarries Control Act." Sault Ste. Marie, Sudbury, and I am not sure Thunder Bay, are the only areas in northern Ontario that are currently designated under that act.

I just do not understand why, if this is good legislation, it cannot apply to the whole province; at least, the populated areas of the province. It completely boggles the mind when you look at parts of eastern Ontario that are not covered by the act. You might argue, "Well, northern Ontario." Knowing the attitude that most people in southern Ontario have to the north, you could accept why good legislation should not apply to the north. It would not be the first time. But why eastern Ontario? Is it Frontenac-Addington that is not designated? Why? You have an awful lot of limestone and granite and so on in that area, do you not? It seems to me there might be a lot of quarries in that area. Why on earth is it not designated?

Mr. Ballinger: I do not think you had better answer that one, Mr. Scott. It is not a staff answer.

Mr. Wildman: No, it is not a staff answer.

Mr. Ballinger: I will attempt to answer that one.

Mr. Wildman: I will not take away the time of the parliamentary assistant, in which he may argue that a former regime in this province, for whatever devious reasons, decided not to designate that area. I would not argue with the parliamentary assistant if he were to use those terms, which I know he would not, but now is the time to change it. Now is the time to do something about it.

We are changing the act. We are trying to bring forward a new piece of legislation that will govern the extraction of aggregates to maximize that benefit to the province and to protect the environment and the communities in the areas where extraction is taking place. It just is unacceptable to me that we would continue in the new legislation the exceptions that we have currently under the Pits and Quarries Control Act.

Mr. Ballinger: First of all, I want to say to Mr. Wildman that the attitude of the people in the south is not as you say about the people who live in the north. I was somewhat disappointed you would make that kind of comment because I do not think that is a fair comment at all. We are one province.

Mr. Wildman: I said it with tongue in cheek.

Mr. Ballinger: I knew you would say that.

I think this a classic example from the government: you're darned if you do and you're darned if you don't. One of the things the minister has done is state publicly that over the next three years there is a game plan in place to encourage those three populated areas Mr. Wildman spoke of, which I think amount to about 150 additional pits, Mr. Scott—something along that line?

Mr. Scott: That would be somewhat—

Mr. Ballinger: About 150 pits that are not currently administered by

the P and Q Act. For the sake of Mr. Wildman, the purpose and the reason the minister has done this is that we want to enter into consultation.

One of the things you do very effectively when the government brings in a piece of legislation is that you are always quick off the mark to accuse us of not consulting, and in this particular case there is reason in eastern Ontario, and I do not want to get into the politics of eastern Ontario.

There is no question that I think most of us would agree those areas should be. The problem is that now there is a historic precedent there. What we want to do and what the minister wants to do through regulation is, once the act is in place and once we can show the direction of this new act—I can tell you in places like my community of Uxbridge, and in Caledon and Milton, the major affected areas, we are going to see substantive change in terms of enforcement. We have some legislation that has some bite in it which we have not had before.

I think, on that premise, those other three populated areas will happen over the next three years, in consultation with the industry, with the municipalities and with the community. It will happen because the track record will be there. One of the initiatives of the act, of course, is additional funding through the fund. A cent per levy that will go into general administration will help beef up the administration.

With all of those things, Mr. Wildman, I feel quite confident, on behalf of the minister, that those three populated areas that are not being designated will be over the next three-year period, and I think we will be pleased with the results of this new bill. Certainly, if I am still around I will be pushing for that initiative to take place because I think it is a very important part.

In the interim, we want to get on with what we have now, immediately following up with discussions on those three areas.

Mr. Wildman: On a point of order, Mr. Chairman: I want to make clear that at no time have I accused the government on this piece of legislation of not consulting. In fact, I have on a number of occasions pointed out that the staff and the minister did indeed consult and that we appreciated it. It is the results of the consultation that we have some problems with, but the consultation was there and it was useful.

Having said that, I just do not accept that we should wait to expand this legislation. Now that we have the legislation open and it is being amended, let's amend it so that it covers all private lands.

1450

Mrs. Grier: Just supporting what my colleague has said, I think if ever there was an act on which there was a lot of consultation, it was certainly this one. The act has been a long period in the gestation process, and anybody who had the interest in the industry has known of the comments, critical and positive, from both sides about the act. To say we need further consultation is really rather stretching it.

As one who was not able to be here the week the committee heard submissions, I have found the summary of submissions from Mr. Richmond very useful. I was struck by the fact that in this aspect of the legislation, both



the industry groups and the environmental groups agreed. All recommended that all of Ontario be covered by the act.

Therefore, I find it particularly difficult to understand why the government would not have acceded to what appears to have been an almost unanimous request. I think it is unfortunate that they have not done so. Again, I certainly hope they will have a change of heart.

Mr. Ballinger: Just for the record, because I think it is an important point and there has been a lot of discussion about it, now versus then, cost-related, administrative, trying to put the new act in place and the cost-benefits as related to that, I think it is important that at this time Mr. Scott sort of capsulize as briefly as he can the issue surrounding this particular discussion.

Mr. Scott: This has been a very difficult area for us, because we do not disagree with what is being suggested. In terms of bringing in new areas, our real problem is that we want to do it in a consultative manner, to start with, because there are widely divergent views on the part of municipalities about whether they should or should not be designated.

We probably agree that they should be designated, but we want at least to go back and explain the benefits to them so we can bring them on stream in a co-operative manner rather than in a confrontational manner. That is one of the things.

The other part is that at the present time we have only 17 of the 47 districts in the province where we have staff who are used to dealing with the private sector and with the municipalities in a co-ordinated manner with pits and quarries. We would have to defer bringing the legislation in for a period of time to get people up to scratch to be able to implement this legislation if we were to do it all at once. That would probably be a disservice and it would get things off the ground in a manner that would probably have some of our people untrained, unknowing, going out and probably causing more detriment than benefit for the first couple of years.

We feel that by bringing it on in a graduated manner, as we are now proposing, we are going to be able to address that concern by having more staff brought on, and as we move into new areas, either some of the more experienced people would be available to assist the man next door who is hired or people who have experience would be transferred. We would be able to do it in a more co-ordinated manner and be able to capture the benefits we hope to reap with this new legislation with proper staff training and proper implementation.

Mr. Chairman: Mrs. Grier, is your question pertinent to his response?

Mrs. Grier: Yes. I am just wondering, given what has been said, whether you would have any objection to building into the legislation some kind of phasing or staging of the complete designation of the province so that at least those areas with which you are going to consult know very clearly that it is the intent of the ministry that it is working towards designating the entire province.

Mr. Scott: We look at the regulations as the means of doing that, and we are not necessarily looking at it from the standpoint of going against

your wishes. It is just that we figure this is the proper way to proceed with it.

There is one other concern that should be addressed. Some very rural areas use all the gravel they mine in their local areas. The local municipality produces or uses virtually all the gravel there, other than people who are building houses or putting gravel on a laneway going to a farm or a woodlot operation. In those areas, the 14 cents a tonne—eight cents of that for rehabilitation and six cents for the annual fee—would in large part, or at least in part, go towards doing very little else other than inflating the cost of gravel in that area.

We would basically be taking some money out of that very rural, quite often fairly poor economy, and we have some concerns. I cannot really name a specific area, but let's say an area 50 miles north of the Trans-Canada Highway, up along the northernmost part of northern Ontario, north of Lake Superior; one of those areas up there. There is no way that gravel is going to go any further than a few miles down the road.

1450

We may want to designate those areas as time goes on, but we probably would not want to do it without looking at it very carefully to see what impact it is going to have on the local economy.

Mrs. Grier: Just one final question: The conversation seems to have concentrated on the north, but the Aggregate Producers' Association of Ontario recommended that if there is in fact a perceived difference between northern and southern Ontario, then, as a minimum, all of southern Ontario should be designated. Would you contemplate that?

Mr. Scott: We are proposing that through the regulations we would cover that within the first three years.

Mrs. Grier: Within the first three years?

Mr. Scott: Yes. That includes the area from Sault Ste. Marie across to Sudbury and a few areas farther north from that too, but all that key area from there on south, excluding possibly Algonquin Park, because you cannot mine the gravel in there anyway. All that other area would basically fall under this type of jurisdiction within the time frame we have been talking about.

Mrs. Grier: Which is three years.

Mr. Scott: Mr. Ballinger would have to answer that, but that is what we are approaching.

Mr. Ballinger: That is the time frame.

Mr. Pollock: In regard to some of the comments made to eastern Ontario, anybody who is familiar with eastern Ontario knows that there are a lot of poor roads in eastern Ontario, and roads are extremely expensive to build. The local people cannot see spending, say, five years' time and a million dollars on licensing some pit. They would rather see that money spent on roads and see something really accomplished.

We have all kinds of rock in eastern Ontario. I do not want to put it on



the record that the people in eastern Ontario are not concerned about the environment, but I think they have their priorities right. They would rather have roads than spend enormous amounts of money on licensing pits and that sort of thing, because roads are extremely expensive to build in eastern Ontario, especially when you are in the Laurentian Shield.

That is why sometimes eastern Ontario is concerned about these mammoth gravel operations, because, really, there are not too many of them in eastern Ontario. There are a lot of small, as you say, pa-and-ma operations, but not big, mammoth operations. We do not have the gravel deposits in some areas of eastern Ontario.

Mr. Wildman: In the development in my area, in Algoma district now, where a number of pits that have been used for the needs of the area immediately but now are being expanded, where a dock is being built on the north shore of the north channel of Lake Huron, with assistance from the senior levels of government, to enable barges to come in to take aggregate to southern Ontario across the lake, the argument being made that pits in undesignated areas in northern Ontario will likely be serving the immediate area certainly does not apply in this case. In this case, you are talking about a major operation with an investment of a large amount of money on the building of harbour facilities to enable aggregate to be transported to the southern part of the province, which certainly indicates the need for aggregate in this part of Ontario but in my view also indicates the need for designation of our area so that the legislation applies.

Mr. Chairman: Are there any further comments? Are you prepared to call the vote? Those in favour of the amendment? Those opposed?

Motion negatived.

1500

Mr. Wildman: I have a second amendment that I have just written that I would like to move; I will need your assistance or the assistance of legislative counsel about how to put it exactly in order. I will read the wording I have now.

I move that this bill and the regulations apply to all private land in Ontario three years subsequent to the date of proclamation of the act by the Lieutenant Governor.

Mr. Ballinger: May we stand that motion down so we will have an opportunity as a committee to discuss that and discuss the impact with staff and maybe reintroduce that tomorrow, if it is okay with Mr. Wildman?

Mr. Chairman: Are you agreeable to that, Mr. Wildman?

Mr. Wildman: I am willing to have it stood down.

Mr. Chairman: My interpretation of this is that if we are standing this down, it is going to be clauses 5(1)(b), (c) and (d) and subsections 2 and 3.

Mr. Wildman: To be honest with you, I am not sure exactly where it should fit in the bill. It might be right at the end of the bill, for that matter. I do not know.

Mr. Chairman: The only comment I am making now is that we cannot really address those three sections from clause 5(1)(b) on until this has been settled.

Mr. Wildman: Right.

Mr. Yurkow: I think, for what Mr. Wildman wants to do, he should simply stick with the amendment he made initially, and then on the proclamation, or section 78—I guess there are two things. You can proclaim certain parts of the act at any time. You can proclaim either the whole act to come into force on a particular date or any parts of it to come into force on a particular date. So if Mr. Wildman's initial amendment passed—

Mr. Wildman: Well, it has not. It has been defeated.

Mr. Yurkow: No, but that would be one avenue. Then clause 5(1)(b) is simply proclaimed three years after the rest of the act.

The alternative is again to go with Mr. Wildman's initial amendment and, in the proclamation section, put in a further subsection saying that clause 5(1)(b) comes into force in three years.

Mr. Wildman: I am easy about whichever way to do it.

Mr. Fleet: A point of order, Mr. Chairman: I would like to hear the proposed amendment again, because I am not sure if that is the most effective way to proceed.

Mr. Chairman: Mr. Wildman has moved that this bill—I think it would be better if we said "Bill 170" instead of "this bill"—and the regulations apply to all private lands in Ontario three years subsequent to the date of proclamation of the act by the Lieutenant Governor.

Mr. Fleet: I do not want to get into the merits of it, because I think it is going to be held down, but I suspect, as a matter of procedure, that even if we approved the rest of the subsections of section 5 and just did not deal with section 5 as a complete body, left that until tomorrow, then we would be able to finish off clauses (b), (c) and (d). We can come back. I think we can still revisit the question, is what I am saying, as a matter of procedure.

Mr. Wildman: The only problem, as I think was rightly pointed out, is that if this were to carry, hypothetically then, subsections 5(2) and 5(3) are irrelevant.

Mr. Fleet: They are not irrelevant, because they are still relevant in the interim.

Mr. Wildman: I see: in the interim. You are right.

Mr. Fleet: I think we can vote on all the rest as long as we do not in effect finalize section 5. We will leave it and revisit it tomorrow.

Mr. Ballinger: Mr. Chairman, just for my own benefit, I keep thinking about my son's father-and-son banquet this evening. Could we reintroduce that at the very end? Let's go through the normal procedure and then bring it in, because there may be a couple of other sections. After we have done the bill, we can come back rather than tie it down until tomorrow. I



do not think that is fair to you, Bud, and it certainly is not fair to us, to give us enough time to discuss this. I just do not want to defeat it on you.

Mr. Wildman: It is quite all right with me to stand it down.

Mr. Chairman: The other point the clerk would like me to make at this time is that because the amendment was defeated, we are going to require unanimous consent to reopen the discussion on that when we do bring it back.

Mr. Ballinger: That is fair. We will have had an opportunity to discuss it.

Mr. Chairman: If I understand the committee correctly, we are going to leave clauses 5(1)(b) and 5(1)(c).

Mr. Wildman: Mr. Fleet suggested we could deal with those. I am quite happy to do that.

Mr. Chairman: All but clause 5(1)(b)?

Mr. Fleet: I think you can vote even on clause 5(1)(b). You can vote on everything, as long as we come back and revisit to see what we add on. Mr. Wildman's amendment is essentially an add-on.

Mr. Chairman: Okay. So the amendment has been defeated. Will clause 5(1)(b) as it stands now carry? Carried.

Clause 5(1)(c)? Carried.

Clause 5(1)(d)? Carried.

Subsection 5(2)? Carried.

Subsection 5(3)?

Mr. Wildman: Again, it is clear that we are carrying these—

Mr. Chairman: The thing I am not going to do is say that section 5 is carried completely, so it is still open for further discussion. But as it stands, it is all but passed at this point, except for that one motion.

Section 6:

Mr. Chairman: Are there any comments? Carried.

Section 6 agreed to.

Mr. Chairman: We are now entering Part II entitled "Licences."

Mr. Wildman: Just a point, Mr. Chairman. I do not want to belabour this, but section 6 does, in my view, deal with the problem of how to regulate crown lands in northern Ontario and parts of the province that are not designated. So in fact you are designating crown lands under the act, and that is a very good thing.

Mr. Scott: Yes, we are designating crown lands.

Section 7:

Mr. Chairman: Under section 7, under "Licences," is there any comment with respect to subsection 7(1)? Carried.

Subsection 7(2)—

Mr. Wildman: We have, as we have indicated in the hearings, real concern about the class A licence and class B licence. I understand the arguments that have been raised that a small operator should be given some leeway and there should be some provision made to make it easier for smaller operations. But in our view, if the act is worded well, then there should be the same rules applying to all operations. In our view, we cannot accept the division into class A and class B.

Mr. Chairman: Are there any further comments? Clause 7(2)(a). Carried?

Mr. Wildman: No, we want a vote, on a division.

Mr. Chairman: You want to vote on it? Those in favour of clause 7(2)(a)? Opposed? Carried.

Mr. Wildman: Same vote for clause 7(2)(b).

Mr. Chairman: Same vote.

Subsection 7(3)?

Mr. Wildman: Same vote.

Mr. Chairman: Same vote.

Subsection 7(4)? Carried.

Subsection 7(5)? Carried.

Section 7 agreed to.

Section 8:

Mr. Chairman: On subsection 8(1), I believe there is a proposed amendment.

Mr. Wildman: I have a number of amendments.

Mr. Chairman: That is on subsection 8(1), is it not?

Mr. Wildman: Yes. Do you want me to put them all?

Mr. Chairman: The first one is adding at the end of clause 8(1)(b).—

Mr. Wildman: The first one deals with clause 8(1)(b).

Mr. Chairman: I will call clause 8(1)(a). Carried.

At the end of clause 8(1)(b)—It means we can call clause 8(1)(b), as well.



Mr. Wildman: Do you want me to move that now, Mr. Chairman?

1510

Mr. Chairman: Is this going to be replacing (b), because it says it is at the end of—

Mr. Wildman: No, it is an add-on.

Mr. Chairman: It is an add-on?

Mr. Wildman: I think I should move it.

Mr. Chairman: Yes.

Mr. Wildman moves that subsection 8(1) of the bill be amended by adding at the end of clause (b) "and contain a plan of survey showing the shape, dimensions and area of the site."

Mr. Wildman: The purpose of the amendment is to expand on what is required in a plan and to make it explicit as to what the description of the plan should include.

Mr. Chairman: Any comment on this?

Mr. Ballinger: We could get Mr. Scott just to refer to the legal aspect of the survey. There are parts of this we want to support, Mr. Wildman, as some of your amendments. Unfortunately, this is not one of them.

Mr. Scott: Okay. We do require the same type of information, it is just required in a different way by the shape, dimensions, hectarage of the site and location of the excavation area and the location and type of fences. We go into a lot of detail on all of this. We also have a key map showing the location of the site up at the top, and the plan also has to be drawn to scale. It is basically the same thing. It is just being asked in a different way and it is in slightly different order in the way it is written in the act compared to what you are suggesting.

Mr. Wildman: You are not including that in, the plan of survey, though.

Mr. Scott: Yes. The plan of survey is just another terminology for the description of the property to scale.

Mrs. Grier: Can I be clear on that?

Mr. Fleet: On a point of order, Mr. Chairman: Mr. Wildman, when you are using the phrase "plan of survey," are you using the term as it would be used in the real estate business? A plan of survey has a certain implication under other legislation. It is really quite different from what I think Mr. Scott is talking about.

Mr. Wildman: That is right. That is what the difference is, frankly. We are talking about a survey.

Mr. Fleet: He is using it in a generic phrase, but a plan of survey is a very technical kind of document.

Mr. Wildman: I am talking about when you get a surveyor and you get the iron posts and survey.

Mr. Fleet: Plans of survey are like grading down to a millimetre. It is really incredibly precise and expensive.

Mrs. Grier: That is not the intent. The intent is to have a description of the site that is accurate and officially measured, rather than what could be a fairly general and amateurish description drawn to scale. There are a lot of people who can draw things to scale but who may not necessarily get it quite right and you are coming back afterwards and having real difficulty as to where was the boundary, after the excavation has been done.

Mr. Wildman: Just for explanation, in another context, I have had a lot of problems in my constituency where in recreational areas, numbers of people over a number of years have purchased lots that have had descriptions and pictures drawn, they thought, to scale by an individual who was selling them a lot and now we find that their cottages are built on their neighbour's lot, in fact, when a real survey is done. That is why we are talking about a survey. We do not want a hole on the neighbour's lot.

Mr. Scott: The intent of the site plan is not to determine who owns the property and those types of aspects. We require a fence around the property to delineate the boundaries of the licensed area. The intent of the site plan is to accurately show the size, the scale and so forth of the operation so that we can go out and look at that property and accurately determine what should be going on in a certain part of the property and what areas are out of bounds to have anything going on on them.

A legal surveyor's drawing of the property would not necessarily cover all the things we would want. What you are thinking of is actually a legal description with metes and bounds of the description of the boundary around the property.

That would probably come before they got to the site plan stage, because the site plan would not normally have all that type of information included on it, but it would have more detailed information on how the property was going to be operated and how it was going to have certain setbacks, etc. That is what we are looking for. The boundary fence is the other aspect that would delineate where it is on the ground itself.

Mr. Wildman: If this has already been done, what is the problem then? You just include it.

Mr. Pollock: In most cases, it is done.

Mrs. Grier: Why can you not just say "accompanied by a survey," if you are talking about a sketch of the site that shows the excavation? What we are looking for is a proper legal survey of the boundaries of the site, which often does not exist.

Mr. Pollock: In a lot of areas, I would say they do.

Mr. Wildman: If they do, there is no problem.

Mrs. Grier: If they do not, they ought to be surveyed.



Mr. Pollock: If they do not, I guess they ought to be surveyed, but if they do, there is not much point in doing it again.

Mrs. Grier: No, I am not suggesting you do it again; you just provide a copy when you go for a licence.

Mr. Scott: It is really not a matter for this particular legislation. We require whoever is making an application for a licence to certify that he is the owner or has a legal agreement to operate on that particular property, and we check the registry office to see that indeed there is some kind of relationship there between who is applying and who owns it according to the registry office. But we have not found a need for the type of description—and I am looking at the Pits and Quarries Control Act when I am making this statement. To the best of my knowledge, we have never run into a problem where that type of information would have assisted us in doing the job that the legislation is designed to do.

Mr. Wildman: Okay, again, I will not belabour this, but in another aspect of this ministry's operations, forestry, I do know of a number of occasions where an individual has gone to the ministry for permission to cut on a lot, and because it was improper, either by the ministry or by the cutter himself, found that he ended up cutting down trees on the neighbouring lot because he did not know where the line was. He thought he did, but he did not.

Mr. Chairman: Mr. Fleet has been waiting patiently to interject something. I think I will call on him now.

Mr. Fleet: I am hoping to clarify a little bit of the discussion, because I think the key here turns on the use of a phrase in the amendment, "a plan of survey." I think the intentions of Mr. Wildman are good. I think what he is really saying is not so much that he is worried about using a plan of survey, which is used under the purposes of the Land Titles Act, for instance, but rather he wants to make sure that the documentation and the key map that are submitted are accurate. It is a matter of accuracy.

I submit that the reasons for having something called a plan of survey are because, under the Land Titles Act, there are certain kinds of legal requirements for certain kinds of accuracy, i.e., to make sure that you own the land that you think you own and that your cottage or your house is built where you think it should be.

But the kinds of requirements that you have here are rather different, and one of the tipoffs to this exists a little bit further on in the proposal when it talks about the kinds of people who can prepare a site plan. Maybe it is a surveyor, maybe it is an engineer, maybe it is someone else. I think the desire for accuracy is inherent. You could not do something that complies with clauses 8(1)(a) through (t) as conditions and not be—I mean, either it is accurate or it is not. If something is grossly inaccurate, there are all kinds of repercussions, including the pulling of a licence. That is not the kind of remedy that exists under the Land Titles Act or perhaps with forestry legislation or a lot of other areas.

I understand the desire for accuracy. I think that is logical, and that is what is needed. I, personally, with my own experience, having seen plans of surveys, instinctively think that is not what you would want here. It would be applying a terminology and a concept from other kinds of legislation that really are not applicable in this case. I hope that is of some assistance.

Mr. Wildman: I think it is. The problem I have, as Mr. Fleet has indicated, is that before the guy digs the hole, I would like that he know where the iron post is so that he will not dig up his neighbour's aggregate. If you can assure me that is not going to happen or that this kind of a problem has never occurred, then okay.

1520

Mr. Fleet: The neighbour also has the right of civil action, I might add.

Mr. Wildman: I understand that and they may get damages and so on and get the thing rehabilitated, but I would rather avoid the hassle if we could.

Mr. Chairman: I think we have pretty well gone around on this one, have we not, Mr. Wildman?

With your permission, I am going to call all four of these separately because they are quite different; they are not combined. I would like to call a vote on the addition to clause 8(1)(b). All those in favour? Opposed? Defeated.

Motion negatived.

Mr. Wildman: We might as well carry clauses 8(b) and 8(c) in the bill.

Mr. Chairman: Yes, that is what I propose to do. I thought you were talking about clauses (b) and (c) in yours, and I just did not see how they fit in.

That means we should now carry clauses 8(1)(b) and 8(1)(c).

Mr. Ballinger: Let me just make this point please. On clauses (b), (c) and (d), we do not have any difficulty as modified in clause (h) in the way that Mr. Wildman has sort of laid out clause (h).

Mr. Fleet: Clauses (g) and (h).

Mr. Ballinger: We do not have any difficulty with those proposed amendments.

Mrs. Grier: The existing and proposed?

Mr. Ballinger: Yes.

Mr. Wildman: We could carry subsection 8(1) all the way down to clause (g).

Mr. Chairman: What about clause (h)? You said (g) and (h).

Mr. Wildman: No, I just said down to clause (g), if we could carry them now.

Mrs. Grier: Clauses (a), (b), (c), (d), (e) and (f).

Mr. Chairman: Is it agreeable that we carry everything in subsection



8(1) down as far as clause (g) including (g)?

Mr. Fleet: No, excluding (g).

Mr. Chairman: Excluding (g)?

Mr. Wildman: Including (f).

Mr. Chairman: Mr. Wildman moves that subsection 8(1) of the bill be amended by inserting after "of" in the first line of clause (g), "existing and proposed."

Mr. Wildman: So it would read, "location and type of existing and proposed fences."

Motion agreed to.

Mr. Chairman: Does 8(1)(g), as amended, carry? Carried.

Mr. Wildman: There are two amendments for (h).

Mr. Chairman: Mr. Wildman moves that subsection 8(1) of the bill be amended by inserting after 'of' in the first line of clause (h), "existing and proposed" and inserting after "species" in the first line of clause (h) "size."

Mr. Wildman: So it would read, "location of existing and proposed tree screens and the species, size and type of the trees."

Mr. Chairman: It is agreed then?

Mr. Ballinger: Just hang on for a second.

Mr. Wildman: If I can explain, the "existing and proposed" is obvious. The reason for the other one is that—if you want to deal with them separately, rather than together, that is fine with me—if in the site plan, in the application for a licence, the individual developer of the site says: "Well, we're going to cut down these maple trees in this area that are of an 8-inch diameter and excavate the gravel. Then after the site is no longer in use, we're going to rehabilitate and we're going to replant trees of a certain size, whatever size it is."

Mr. Fleet: There is a difference between a seedling and a six-foot tree. Conventionally, that is the kind of differentiation.

Mr. Wildman: So they should indicate in the plan what kind of tree, what size of tree they intend to plant.

Motion agreed to.

Mr. Chairman: Shall clause 8(1)(h) carry? Carried.

Shall clauses 8(1)(i) and 8(1)(j) carry? Carried.

I have notice of an amendment in clause (k) from the government side.

Mr. Chairman: Mr. Ballinger moves clauses 8(1)(k) and (n) of the bill be struck out and the following substituted therefor:

"(k) the location and size of existing and proposed stockpiles of topsoil, subsoil and overburden and the location and size of proposed aggregate stockpile areas; and

"(n) all existing and proposed major roads on the site."

Mr. Ballinger: Mr. Scott, in the language of the industry.

Mr. Scott: We think these refinements are necessary to ensure that we will have the jurisdiction to control where such things as stockpiles for overburden, for topsoil, for subsoil, etc., are accurately able to be shown on the site plan so that we have control over what happens afterwards on that site. We can control those stockpiles, if they are topsoil, by requiring them to be seeded so that they are not left as an eyesore for a long time to come.

Mr. Pollock: Has this been a problem?

Mr. Scott: It has been in some areas, yes.

Mr. Pollock: Okay.

Mr. Scott: If you do establish vegetation on them, generally speaking, it retains a higher capability of that soil for when it is going to be respread again because the nitrogen has continued to be built up and so forth.

Mr. Chairman: Further comment? Can we assume clause 8(1)(k), as amended, is then carried? Carried.

I will take them in order. Shall clauses 8(1)(l) carry? Carried. Shall clause 8(1)(m) carry? Carried. Shall clause 8(1)(n), as amended, carry? Carried.

Is there any comment on clauses 8(1)(o) to (t), inclusive? Shall we assume they are carried? Carried.

Subsection 8(2).

Mr. Wildman: We have to carry 8(1), the whole thing.

Mr. Chairman: I always forget to do that for some reason. Shall we carry all of subsection 8(1), as amended? Carried. Shall subsection 8(2), in its entirety, carry? Carried. Subsection 8(3)? There is only one section there. Carried. Subsection 8(4). I think we have an amendment proposed by the government side.

Mr. Ballinger moves that subsections 8(4) and (5) of the bill be struck out and the following substituted therefor:

"(4) Every site plan accompanying an application for a class A licence must be prepared under the direction of and certified by a professional engineer who is a member of the Association of Professional Engineers of Ontario, a land surveyor who is a member of the Association of Ontario Land Surveyors, a landscape architect who is a member of the Ontario Association of Landscape Architects, or any other qualified person approved in writing by the minister."

Mr. Ballinger: Mr. Scott, for clarification, please.



Mr. Scott: This amendment basically recognizes that in the consulting companies, largely the technicians are doing the drafting and so forth of the plans themselves and it is one of these people or someone who is appointed by the minister to have this qualification who is the person who would actually be certifying it and giving managerial and professional direction. That is what we are trying to capture, because we felt that there might be a loophole there that needed to be addressed.

Mr. Chairman: Any discussion? Shall subsection 8(4), as amended, carry? Carried. We have deleted subsection 8(5), and my clerk tells me that this does not need to cause us a bother; we keep with the same numbering and this will be modified at a later date.

Mr. Faubert: Do you mean 6 becomes 5 because we do not really need it?

Mr. Chairman: Yes.

Mr. Fleet: Are we going to be correcting that in committee at the end of the process, or is it automatically done by legislative counsel?

Mr. Yurkow: It will be done editorially when the bill is reprinted.

Mr. Fleet: So you are charged with the responsibility of catching all the internal cross-references as well?

Mr. Yurkow: Yes, that is correct.

1530

Mr. Wildman: Just to be helpful, I could throw in my amendment there.

Mr. Chairman: This is a good time to point out that it is essential that every word you want in here be put on the official record, because that is how it is done.

I am going on to subsection 8(6).

Interjection: Is it finished?

Mr. Chairman: I guess not all of it.

Mr. Wildman: There is a government amendment.

Mr. Chairman: Up to and including clause (j). Clauses 8(6)(a) to (j) are carried.

Mr. Ballinger moves that clause 8(6)(k) of the bill be struck out and the following substituted therefor:

"(k) the location and size of existing and proposed stockpiles of topsoil, subsoil and overburden and the location and size of proposed aggregate stockpile areas."

Mr. Ballinger: It is the same as for a class A, as in the previous amendment.

Motion agreed to.

Mr. Chairman: Clause 8(6)(k), as amended, is carried.

Is there any comment on clauses (l) to (t), inclusive?

Mr. Fleet: We can do clauses (l) and (m), Mr. Chairman.

Mr. Chairman: Clauses (l) and (m) are carried. We have another amendment to clause (n).

Mr. Ballinger moves that clause 8(6)(n) of the bill be struck out and the following substituted therefor:

"(n) any existing surface water on and surrounding the site and proposed water diversion, storage and drainage facilities on the site and points of discharge to surface waters."

Motion agreed to.

Mr. Chairman: Clause 8(6)(n), as amended, is carried.

Mr. Ballinger: It should make Franco happy that we have got it on the record and it is official for him.

Mr. Chairman: Is there any comment on clauses (o) to (t), inclusive? Clauses (o) to (t), inclusive, carried.

Mr. Faubert: Just on a point of order, Mr. Chairman: Perhaps I could direct this through you to Mr. Wildman. Clauses (g) and (h) are similar to subsection 8(1).

Mr. Wildman: That is a very good point. Thank you very much.

Mr. Faubert: We did not amend those. I am just wondering whether we should, to make it consistent as a piece of legislation.

Mr. Wildman: That is a very good point. If you want to move that, I would support it.

Mr. Faubert: Okay. Perhaps I will move it.

Mr. Chairman: We have to have unanimous consent to reopen clauses (g) and (h). Do I have unanimous consent? Is there any problem with that?

Mr. Ballinger: The same amendment for class B as proposed by Mr. Wildman for class A.

Mr. Wildman: That would bring it in line.

Mr. Chairman: Do you have any problem with that?

Mr. Ballinger: No problem, Mr. Chairman.

Mr. Chairman: Do I have unanimous consent, in the interest of consistency, to revert to clauses 8(6)(g) and (h)?

Agreed to.

Mr. Chairman: Mr. Faubert moves that in clauses (g) and (h), the



words "existing and proposed" be inserted after the word "of" and in clause (h), the word "size" be inserted after the word "species."

Motion agreed to.

Mr. Chairman: Shall we assume (g) and (h) are carried as amended?  
Carried.

We now are at subsection 8(7). Any comments? Carried.

Subsection 8(8)? Any comments? Carried.

Does section 8, as amended, carry?

Mr. Wildman: We are opposed.

Mrs. Grier: We do not like the A and B licences.

Mr. Wildman: We do not like the A and B licences, so to be consistent—

Interjections.

Mr. Chairman: We are calling the vote. All those in favour of carrying section 8 as amended? All those opposed?

Section 8, as amended, agreed to.

Section 9:

Mr. Fleet: Mr. Chairman, I suggest we do clause 9(1)(a). I think we can get by that one.

Mr. Chairman: There is a fair bit of written comment on this proposed amendment to section 9, so we have a fair bit of work to do here.

Mr. Wildman: Mr. Fleet is correct, though, that there is no amendment to clause 9(1)(a), so we can carry it.

Mr. Fleet: It is about all they left alone.

Mr. Chairman: We are talking about clause 9(1)(a). All those agreed?  
Carried.

I presume your first attack is on clause 9(1)(b).

Mr. Wildman: Right. I move that subsection 9(1)—

Mr. Fleet: On a point of order, Mr. Chairman: We have an (aa), an (ab) and an (ac), and I am just wondering why they are listed on the page second when I would have thought procedurally you would do them first. There may be a reason; it just was not apparent to me.

Clerk of the Committee: They are new clauses.

Mr. Fleet: But they would normally fall after (a) and before (b). That is why I am asking.

Mr. Wildman: I am easy, whichever way the chairman wants to do it.

Mr. Chairman: If there is some reason for not doing it, we could do (aa), (ab) and (ac). That keeps it in order.

Mr. Fleet: We want to shoot you down in order, Bud, that is all.

Mr. Chairman: I am impressed that these guys are actually reading all these things, Bud.

Mr. Wildman moves that the said subsection 9(1) be amended by adding thereto the following clauses:

"(aa) clearly demonstrating the need for the proposed site, the persons it is likely to benefit, the persons it is likely to harm, and the period of time over which the impact is likely to occur;

"(ab) describing the ultimate use of the site and the suitability of the proposed use;

"(ac) describing measures to mitigate the impacts referred to in clauses (aa) and (b)."

Interjection: Should that be (ab) rather than (b) there?

Mr. Wildman: Yes.

Mr. Chairman: Do you want to comment?

Mr. Wildman: Yes. The—

Mr. Yurkow: I do not think that is right.

Mr. Wildman: Should it be (b)?

Mr. Yurkow: I believe it is.

Mr. Wildman: That is the problem with doing them ahead of time. The (b) refers to the amendment I was going to be putting. I do not think it is a problem, if we can live with it. That should be (b).

Mr. Chairman: It should be just a (b) in that last line.

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Mr. Wildman: The purpose of the addition to the bill is that section 9 deals with the report that goes with the application for a class A licence. We want to ensure that in this report there is a demonstrated need for the aggregate to be extracted from this site and we want to know who is going to benefit and who is not, and who is going to be harmed.

Keep in mind that although, as a party, we have objected to the designation of class A as opposed to class B licences, we are talking about class A licences as proposed in the bill, which are major operations, ones that are going to be more than 20,000 tonnes of aggregate extracted. We are talking about a long, ongoing operation.

Number one, if you are going to have a site that requires that much excavation, obviously the developer should be required to demonstrate a need for the aggregate, that he has a market.



Number two, this size of operation is likely going to impact substantially on the community. I think it is incumbent upon that person to be able to identify who is going to be adversely impacted, and then following from that, to be able to show what kind of use the site is going to be put to after it is rehabilitated and whether or not this is suitable again for the community, and along with that, to show how the adverse impacts are going to be mitigated for those people who are going to be adversely impacted.

I think what we are doing is adding to this a requirement that we know, first off, that there is a need and the market is there for aggregate from this proposed site and, second, who is going to be hurt and how the site is going to be rehabilitated so that those people will no longer, after the site is exhausted or no longer in use, have the adverse impact.

Mr. Chairman: Comments?

Mr. Ballinger: I will not be supporting the amendment. I wonder if Mr. Scott could just take a moment to talk about the planning process.

Mr. Scott: Okay. We do not believe that need is the purview of the government per se in an individual application of this nature. Neither is time. Time over which the impacts could be occurring might be basically varying because of the market forces, the economy and so forth.

We do not think it is appropriate for licences which are not time-limited to be impacted in this way with this type of information being required. We also feel that clause (ab) is unacceptable since the ultimate use and its suitability are more appropriately determined by the municipal planning process. We feel that the other things that this particular amendment would address are already covered in a different manner in the proposed report.

Mr. Wildman: May I ask a question in response to Mr. Scott? If he says that this will be dealt with in the municipal official plan process, then if there were objections from people who felt they were being adversely impacted unnecessarily, what you are saying is they could then apply for an Ontario Municipal Board hearing, go to that hearing and raise objections in relation to—

Mr. Scott: To whatever the ultimate use of the site was going to be at the time of rezoning.

Mr. Wildman: I see.

Mr. Scott: So there is another appeal process that comes later, when it gets to the stage where the municipality is approving whatever end use is going to be made of that particular site if it is going to be changed from the existing use.

It is a mechanism that gives a second opportunity to have input into that process. That is why we feel it is not necessary in the report itself here. Basically, that would be preplanning, which we have had very strong discussions on with the Association of Municipalities of Ontario. They feel they do not want the normal planning process impacted where we or someone else is dictating to them what should happen on that site many years in the future.

Mr. Wildman: What are you going to do, though, on the other side of the coin, if you are talking about, let's say, a 10- or 15-year operation and the person who is proposing this major extraction pit does not have any

proposal as to what the use might be at the time he proposes it so that we know how he is going to have to rehabilitate when he is no longer using it?

Mr. Scott: We normally require them to meet the specifications under the legislation in terms of the sloping, grading, re-establishment of topsoil, grass seed, trees or whatever, putting it back to largely the same type of use and configuration that lie in that area at the present time.

We recognize that some pits will be in operation for many years and indeed that farm land today may be urbanized tomorrow if it happens to be close enough to an urbanizing area, such as Brampton, where urbanizing is occurring quite quickly. We do not feel that we are in a position, and we definitely do not have the legislative mandate, to plan the countryside in terms of the official plan designations or the zoning. That is another jurisdiction.

We are going to be working very closely with the municipalities, but through our legislation we cannot pre-empt them or take away any of their powers and put them in this legislation. What we are trying to encourage is a more co-operative effort among us, the industry and the municipality. So before they actually finish the rehabilitation on any given property, the municipality, the industry and ourselves will have sat down on that particular property issue.

That is why the four-year review or the annual comments that we will be getting will be very useful, because we can try to steer the operation in the right direction long before we actually get to that stage, but we will still leave the power for making those decisions with the municipality as to what it feels the site should have on it afterwards.

Mr. Wildman: I have just one other question. What happens if it is an unorganized area? I will give you an example. I have a situation in my area where—

Mr. Ballinger: Would you quit bringing up those tough ones?

Mr. Wildman: The area north of the Sault that I mentioned before is unorganized with a large population in the area. There was a gravel pit in operation for some time. It is no longer being used as a pit. The owner turned it into a stock car track. It operated as a stock car track for a while, and then I think it changed ownership and became a mobile home park with little or no rehabilitation, I might add.

Subsequently, after a lot of problems which I will not go into, we did get the Minister of Municipal Affairs, through a ministerial order, to require the individual to do some rehabilitation to improve the park and to limit the number of mobile homes located there. Since you are talking about keeping the municipalities involved in what the site might be used for and therefore how it might be or should be rehabilitated, what are you going to do in unorganized areas when and if you get to the point of designating?

Mr. Scott: Okay. In unorganized areas —

Mr. Ballinger: Trust us, we are with the government.

Mr. Scott: That was my line, but I guess it has been taken from me. Before I go on, I would like to say that some of the circumstances you are talking about up in Sault Ste. Marie are quite interesting. I most certainly



will make an effort to get up there this summer to have a tour of the area and see some of them at first hand. I want to talk to the people up in the local office about some of these.

With regard to your concern about unorganized territory, our site plans can be modified at our discretion, so we can tell the individual who has that particular property: "We want to amend that site plan. We think you're going in a direction with your rehabilitation that five years ago was acceptable and today it is not," because of whatever reason. Our minister would then be able to be put in the driver's seat and give direction in that regard. That is part of the discretion that is necessary in this act, because of the crown land, because of the unorganized territory and the vast number of circumstances in this regulatory document that do require that type of flexibility.

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Mr. Chairman: Are there any further comments? Calling the question, then, we are talking about clauses 9(1)(aa), (ab) and (ac) at the bottom of the page. Those in favour? Opposed?

Motion negatived.

Mr. Chairman: Mr. Wildman moves that subsection 9(1) of the bill be amended by,

(a) striking out clause (b) and substituting in lieu thereof:

"(b) describing the environment to be affected or that may be expected to be affected, directly or indirectly, by the pit or quarry operation and the potential impacts on the environment along with any proposed remedial measures that are considered necessary;"

Mr. Wildman: Essentially, we are expanding and making more explicit what is already there in the government bill in this section.

Mr. Ballinger: I say, with the greatest of respect to Mr. Wildman, that we think those are amply covered in the bill and unfortunately cannot support the amendment.

Mr. Chairman: Are there any further comments? The question, then? Those in favour? Those opposed?

Motion negatived.

Mr. Chairman: The next one?

Mr. Wildman: There is no amendment to clause (c). Do you want to do clause (c)?

Clerk of the Committee: We have not carried (b) yet.

Mr. Chairman: Just a second. I see what we are doing. I always get confused with the way you have labelled them (a), (b), (c) and (d) and then—

Clerk of the Committee: Just forget the first letters.

Mr. Chairman: Right. I will just carry those. Shall clause 9(1)(b) carry? Carried.

Clause 9(1)(c)?

Mr. Wildman: I would say that we are very happy to have this in the bill and we support it.

Mr. Chairman: Great. Shall clause 9(1)(c) carry? Carried.

Now we are down at clause 9(1)(d).

Mr. Wildman: I want to say that we owe a great deal of gratitude to legislative counsel for the work he did on our amendments and I think, despite your comment, they are clearly labelled and we know what we are dealing with.

Mr. Chairman: Good. I did not say anything about you; I said it all about me.

Mr. Wildman: I meant that sincerely. We do appreciate the help we got from legislative counsel.

Mr. Chairman: Mr. Wildman moves that subsection 9(1) of the bill be amended by striking out clause (d) and substituting in lieu thereof:

"(d) describing the type and quantity of aggregate on the site and the need for the aggregate;"

Mr. Wildman: The amendment adds "and the need for the aggregate." It just seems to me that besides looking at the kind of and the amount of aggregate on a site, before the minister would want to determine whether or not to grant a licence, he would have to be assured that there is indeed a need for the aggregate and a market.

Because there is aggregate on a site and because somebody wants to develop it I do not think is the only reason the minister should consider in deciding whether to issue a licence. There might in fact be an area of aggregate that is good quality and a good quantity but that we might want to preserve for some future date and not necessarily develop at this time. I would like to hear the comments of the parliamentary assistant or his staff.

Mr. Ballinger: Again, I would like Mr. Scott to respond as relates to this showing the need for the aggregate. Dale, maybe you could just give some background.

Mr. Scott: We feel that "the quality and quantity" adequately covers the one aspect you are talking about, and we do not feel that need is actually part of the equation here when we are determining from a regulatory standpoint whether a property should go forward. We believe the need is actually the role of the private sector market forces in our free enterprise system.

Mr. Wildman: Well, as a socialist—

Interjections.

Mr. Ballinger: Just jump in anywhere.

Mr. Wildman: —I must say I do not have a great deal of confidence in the invisible hand. I hope Adam Smith is not the author of this bill. I do believe it is not acceptable just to say: "All right. We have a lot of good aggregate here. Let's develop it." The minister should look and say, "There



are a lot of pits in the area," particularly in an area where they have a lot of pits already. I mean, the community is having to endure the operations. If there are enough pits or quarries already in the area to meet the need in the area, I think the minister should look at that and say: "It's not just up to the private sector to decide whether or not this pit should operate, but rather we have to take the community concerns into effect and say there are already too many pits in this area. We don't need another one."

I use the Mono school situation as an example. Here you have a situation where this school in effect could end up an island surrounded by gravel pits. The minister, in considering that situation and the appeals that were launched, said he was going to look at need for the aggregate as well as the amount and quality of it in that area before he agreed to further aggregate extraction, because obviously it would be inappropriate, at least I think it would be inappropriate, for the minister to say: "Sure, we have a school here. We have a lot of kids and they have problems with noise, dust and so on, but there's a lot of good aggregate there. If somebody in the private sector wants to develop it, we don't want to stop him." Surely, there are other concerns that should be looked into.

Mr. Ballinger: Quite frankly, I think Mr. Scott has answered quite well. Bud, I could get into a discussion with you. In my own municipality, there is a lot of aggregate around but there is not a lot of class A gravel, as an example.

One of the issues that is happening now in Ontario, within the greater Toronto area, as we call it, the GTA, is the need for A gravel, where the industry is scrambling to find that source; or where there is an identified source where they have already gone through the planning process. Puslinch, where there is a big hearing now, comes to mind. A lot of it centres on the quality of the material. That becomes an issue. A gravel is always in need in Ontario. There will never be enough A gravel, as an example.

Mr. Wildman: Okay. Frankly, I do not think our amendment negates what Mr. Ballinger is saying. The need for the aggregate also means the need for the type of aggregate as well as the quantity or amount of it. I do not think our amendment in any way negates the concern that the parliamentary assistant had for ensuring that there is quality aggregate available. If there is a need for the quality, then all the developer or the person who owns the site had to do is show the minister, in his document accompanying the application, that there is a need for that type or quality of aggregate. I would think the minister then would approve it, even if our amendment were to pass. But I do not want to extend it.

Mr. Chairman: Is there any further discussion? The question, then. Those in favour? Opposed?

Motion negatived.

Mr. Wildman: I like the show of hands here, but I admit I am in favour of the secret ballot. Maybe that is an invisible hand.

Mr. Ruprecht: No, it is just that I voted with you on this one just now.

Mr. Chairman: Shall clause 9(1)(d) carry? Those in favour of clause 9(1)(d)? It is a recorded vote.

Interjection.

Mr. Chairman: Those in favour have to vote for it.

Opposed?

Carried.

What about clause 9(1)(e)?

Carried.

The next one is clause 9(1)(f). We have a proposed amendment.

Mr. Wildman moves that subsection 9(1) of the bill be amended by striking out clause (f) and substituting in lieu thereof:

"(f) describing the impacts on the water table and on existing surface and ground water on and surrounding the site, the impacts of proposed water diversion, storage and drainage facilities on the site and points of discharge, and including proposed remedial measures;"

Mr. Wildman: I think that is clear. If you want me to go on at length, I do not think it is necessary. We want to make certain that in the document that is proposed and accompanying the proposed licence application it makes clear what the effects are going to be on the water table and what remedial measures will be taken.

Mr. Ballinger: Unfortunately, we do not agree. We believe we have already covered that, certainly in a much broader way, but I would again defer to Mr. Scott to emphasize for Mr. Wildman how we believe it is covered.

Mr. Scott: I agree with Mr. Ballinger. It is covered, we believe, quite adequately in the report format and it is also covered in detail on the site plan itself. We can require supplementary information if we so wish at any given time to cover specific circumstances. The class A licence is for larger operations; 20,001 tonnes is not very much. Less than 20,000 tonnes is basically a one-man operation. We still require a reasonable range of information and on a very large operation, let's say, in the millions of tonnes per annum, we could supplement as necessary. We feel that it is covered quite adequately.

Mr. Chairman: Are there any further comments?

Those in favour of the amendment to clause 9(1)(f)? Opposed?

Motion negatived.

Mr. Chairman: Shall clause 9(1)(f) then carry?

Mr. Wildman: Could the parliamentary assistant explain what it means?

Mr. Ballinger: We are supplementing clause 8(1)(o).

Mr. Wildman: I want to know what "supplementing" means.

Mr. Scott: It means supplementing "the water table and any existing surface water on and surrounding the site and proposed water diversion, storage and drainage facilities on the site and points of discharge to surface waters." It means that all those are supplemented.



Mr. Wildman: You mean you are going to add more water?

Mr. Scott: No, more information from the water. It would be nice if we could add more water on some properties, but that was the not the intent.

Mr. Wildman: That is what our concern is. That is why we moved the amendment. I will not go back—I know that has already been defeated—but we want additional information. In our view, it would have made a lot more sense for the ministry in drafting this clause to at least give some examples of what they meant by supplementary information. Just to say, "We want supplementary information," really is leaving it wide open to all kinds of discretion.

Mr. Scott: We do not see that the discretion is necessarily unwarranted in that circumstance, though.

Mr. Wildman: I will not go on here.

Mr. Chairman: Shall clause 9(1)(f) carry? Carried.

There is a proposed amendment, clause 9(1)(g), by the government side.

Mr. Ballinger moves that clause 9(1)(g) of the bill be struck out and the following substituted therefor:

"(g) describing the location and size of existing and proposed stockpiles of topsoil, subsoil and overburden and the location and size of proposed aggregate stockpile areas."

Mr. Ballinger: Again, it is a refinement and just a consistency.

Motion agreed to.

Mr. Chairman: Mr. Wildman moves that subsection 9(1) of the bill be amended by inserting after 'respecting' in the first line of clause (h) 'conformity with.'

Mr. Wildman: It would read, "respecting conformity with any planning and land use considerations." It just makes it clearer that we are expecting that the document will show that they will not just say, "We respect it, but in this particular situation we're not going to exactly conform with it."

Mr. Ballinger: Again, I will defer to Mr. Scott from a staff point of view on the impact of the amendment.

Mr. Scott: Under subsection 13(5), we cannot issue a licence unless the zoning is appropriate. It has to conform with it and this section that is in the proposed bill is to reference that and make sure there is conformity between that jurisdiction and what is required in the report. I know it may appear confusing, but actually when you cross-reference the parts, it does make sense.

Mr. Wildman: In that case, we will withdraw the amendment.

Mr. Chairman: Shall clause 9(1)(h) carry? Carried.

Clause (i)? Carried.

Clause (j)? Carried.

Shall subsection 9(2) carry? Carried.

Mr. Wildman: I like this. Would that you would do it on other private lands in the north.

Section 9, as amended, agreed to.

Mr. Ballinger: Mr. Wildman, your consistency on that point is well noted.

Section 10:

Mr. Chairman: Mr. Ballinger moves that section 10 of the bill be struck out and the following substituted therefor:

"Zoning bylaws

"10. An applicant for a licence must furnish information satisfactory to the minister describing the zoning bylaws applicable to the site and adjacent lands."

Mr. Ballinger: It is really a housekeeping correction. Mr. Scott can describe the reason for Mrs. Grier and Mr. Wildman, if they so require.

Mrs. Grier: I was wondering if they could, at the same time, talk to our amendments, but we have not moved them yet.

Mr. Wildman: I can move it as an amendment to the amendment if you wish.

Mrs. Grier: Our amendments are to subsections 1 and 2, but now you have combined them all into one section, so our amendment will have to be altered. If our amendment is not adopted, what are the implications of merely referring to zoning bylaws in section 10 as opposed to the different process under the Niagara Escarpment Planning and Development Act?

Mr. Scott: I will refer to Mr. Ballinger's part first.

In terms of the government motion, this is basically correcting a legal ambiguity. It is to allow the zoning and any other planning matters to be dealt with concurrently at the same time as the licence application goes forward, so we do not have to have some staging or holding things up and then have a separate process afterward for the Pits and Quarries Control Act. That is what we are trying to achieve, because we would like to make it as synonymous as possible, so they can be dealt with in a co-ordinated and uniform manner.

Your amendment basically is itemizing a different part of government. Zoning bylaws, as defined, cover the Niagara Escarpment Commission. It does cover the development permit—sorry, I had to read what we had there—as defined under the Niagara Escarpment Planning and Development Act. It is already covered and it is one of those areas where it is basically a cross-referencing that you are suggesting. It is not necessary because it has been defined right up front, and anywhere in the whole act that reference to zoning bylaws or Niagara Escarpment Planning and Development Act permits is referenced or should be referenced, if you refer back to that, it just transmits it through the whole act.



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Mrs. Grier: I buy that.

Mr. Chairman: Are you withdrawing it, Mrs. Grier?

Mr. Wildman: We have not put it yet.

Mr. Chairman: No, just about forgetting about it; I keep my records up to date.

Mrs. Grier: I will withdraw it.

Mr. Wildman: I think we can withdraw it. The same argument applies that the ministry made when we moved the amendment in the first place. We made the arguments then.

Mr. Chairman: Is there any further discussion with respect to the government amendment on section 10?

Mrs. Grier: Can I be clear? The need for conformity is that which then comes in section 13. That is still there and applies to this.

Mr. Scott: Yes.

Mrs. Grier: Okay; thank you.

Mr. Chairman: Shall section 10, as amended, carry?

Section 10, as amended, agreed to.

Section 11:

Mr. Chairman: On section 11, I believe I have notice of a New Democratic Party motion to amend.

Mr. Wildman: It is not until subsection 6.

Mr. Chairman: It is on subsection 6, so we can start off here. Shall subsection 11(1) carry? Carried.

On subsections 2, 3 and 4 there is a government amendment.

Mr. Ballinger moves that subsections 11(2), (3) and (4) of the bill be struck out and the following be substituted therefor:

"Notice by minister

"(2) On the day that the minister effects service under subsection (1), the minister shall serve the applicant notice that the applicant must cause notice of the application,

"(a) to be published in the prescribed form in two successive issues of a newspaper or newspapers having general circulation in the locality in which the site is located; and

"(b) to be given in signs placed in the prescribed manner on the site.

"Notice of publication

"(3) The applicant shall notify the minister when the publication of the notice and the placement of the signs have been completed.

"Notice of objection

"(4) Any person may serve upon the minister, within 45 days after the second publication of the notice under clause (2)(a) or within such further period as the minister may allow, a notice of objection to the issue of the licence applied for and the reasons therefor."

Mr. Pollock: Why after the second publication? Is the second publication going to be different from the first?

Mr. Ballinger: It is consistent, consecutive publications of the same ad.

Mr. Pollock: But if you want to criticize, why could you not do it after the first one?

Mr. Wildman: You might have missed the first one.

Mr. Ballinger: That is exactly right, Mr. Wildman. One of the problems with the process is that if you ask to advertise only once and someone is unfortunately away on holidays or something and misses that ad, he misses that opportunity to respond to the minister on the application. We have asked for the ad to be run twice. It is just a little extra protection for any interested body or party to respond to the application.

Mr. Chairman: All you are saying is that the 45-day interval starts at the end of the second publication, so if there were a weekly advertisement it would add seven days on to the 45?

Mr. Ballinger: Yes.

Mr. Pollock: It could read just the same after the first or second, but the 45 days would be after the second.

Mr. Ballinger: Yes. We are making certain due process is there.

Mr. Pollock: Who is going to know whether it is the first or second when they read it in the paper? Is it going to say that? That is what I am getting at. He might see the first one and make his pitch right then. He would not know there was going to be a second one coming.

Mr. Ballinger: I will let Mr. Scott highlight the process.

Mr. Scott: Yes, there would be a date established in the newspaper ad that would cover that issue. They would know that they have until such a date, which would be fixed by us, basically counting from that date plus the 45.

Mr. Pollock: Well, if that is in the ad, I have got no problem with it at all.

Mr. Ruprecht: And this includes—



Mr. Wildman: Only if you are gravelly voiced.

Mrs. Grier: Does this apply to amendments to a licence, or when you say "application," do you mean only the first time an application is made?

Mr. Scott: This would apply to anything where an application is required. In certain circumstances, that may apply to a very major amendment. For example, if you are going to start quarrying a property when you previously were in the gravel pit business, then you would go through this type of process.

However, normally, amendments that we deal with are such things as getting relief to put up a different type of fence or a gate, or amending the site plan to show a rehabilitation change or some other slight difference in sloping associated with something that came up on the property; for example, they had more backfill to be used than they had anticipated. As long as it is acceptable to us and the other ministries, we would make that type of minor modification without going through the normal relicensing process.

Mrs. Grier: Something such as an expansion or a change in the size or location of the pit would be considered a new licence.

Mr. Scott: Yes, that is a new licence. You would have to go through your advertisement, because that is in essence a new property you are applying for.

Mrs. Grier: Thank you.

Mr. Wildman: I would just like to say we are very happy to see the requirement of signs being placed on the site.

Mr. Ballinger: So one of those 42 amendments was not all that bad, eh, Bud?

Mr. Wildman: This was one of your substantive ones.

Mrs. Grier: Seventeen more to go.

Mr. Chairman: Any further comments?

All those in favour of clauses 11(2)(a) and (b) and subsections 3 and 4? It is unanimous, so it is carried.

Subsection 5, I guess, is the same. There is nothing there. Any comment? Shall it carry? Carried.

There is an amendment proposed to subsection 11(6).

Mr. Wildman: I have an amendment that would apply to subsections 11(6), 11(7) and 11(8). Do you want me to put them all at once?

Mr. Chairman: And subsection 9, I think.

Mr. Wildman: Yes, and subsection 9.

Mr. Chairman: If you wish.

Mr. Wildman: They do not in any way contradict the sections as

already placed, so if you want to put these sections and then deal with my amendment subsequently, if that is in order, it might be the best way to do it.

Clerk of the Committee: I think to do each section would be better.

Mr. Wildman: Okay.

Mr. Chairman: Mr. Wildman moves that section 11 of the bill be amended by inserting after "board" in subsection 11(6), in subsection 11(7), in subsection 11(8) and subsection 11(9) in each instance "or a joint board established under the Consolidated Hearings Act."

Mr. Wildman: The purpose of the amendment is to allow for the establishment of a joint board, with representation from the Ontario Municipal Board and the Environmental Assessment Board. It does not supplant the OMB, as our earlier amendment in the definitions did, but is an add-on and allows for the use of the Consolidated Hearings Act.

Mrs. Grier: I might just add to that. Because our amendment was not accepted in the definitions, the definition of "board" as in subsection 11(6) is now merely the Ontario Municipal Board. As was explained earlier, there is always the potential for a bump-up or a request for an environmental assessment, which would bring it before a consolidated hearings board. We think it is important that the provisions of notice that have been included in the act by the government and with which we very much agree not be in any way interpreted to merely limit it to the Ontario Municipal Board. Therefore, we think it is necessary to just add on here "or a joint board."

Mr. Ballinger: Unfortunately, we do not agree. Our argument in opposition to that would be the same as it was in subsection 1(1). I think, Mr. Scott, if you want to again reiterate the process as it relates to—

Mrs. Grier: Your argument on section 1 made this one necessary.

Mr. Wildman: Before Mr. Scott responds, the point we are trying to make here is that because, as my colleague said, the previous amendment in the definitions did not carry, when we say "board" anywhere in this act, we mean the Ontario Municipal Board. At the time, the argument was made that the minister has the discretion to bump it up on request. If that is the case, then we should make it clear that there can be a joint board used when it is bumped up.

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Mr. Scott: Possibly I can clarify that. We looked at that issue. When the original concern was brought up which we talked about this morning, we looked at this. We have also referred back to the Pits and Quarries Control Act with the Maple application for a clay pit to facilitate the city of Toronto's waste disposal site up at the Keele Valley.

The Consolidated Hearings Act does this automatically. Anything that is designated under it by regulation automatically has to follow that process and that particular process is written as an automatic into this legislation as it applies to that particular circumstance and that particular hearing, so the various concerns about notification and all the other aspects automatically become part of the process.

Mrs. Grier: But it was my understanding that under the Consolidated



Hearings Act, and perhaps I would be interested in a comment from legislative counsel, in a joint board hearing the notice provisions were those, and under only those acts to which the hearing applied, and might well be limited to the notice provisions in this act as opposed to the Environmental Assessment Act. There is some discretion, is there not, to choose which notice provisions will apply if it is a consolidated hearing? There is therefore a danger that the narrower definition in this act would be used, rather than the broader ones.

Mr. Scott: I can only give reference to the situation we are in up at the Keele Valley site. The Consolidated Hearings Act does apply to that particular site. They have given notice of much broader, much more—

Mrs. Grier: Yes, but do they have to or did they decide to?

Mr. Scott: Our information at the last meeting I was at was that they had to, that they had to conform to that particular piece of legislation and they have done so. As far as we are aware, your concerns are addressed through that legislation.

Mr. Wildman: Could legislative counsel comment on that?

Mr. Yurkow: I am not sure. I would have to go back and look at the Consolidated Hearings Act. As this bill stands, there is an entitlement to a hearing before the municipal board. My recollection is that a hearing can be called under the Consolidated Hearings Act, but that is not a question of right. I would have to go back to the act and check.

Mr. Searle: It is my understanding a regulation would have to be passed designating a particular application as being covered by the Consolidated Hearings Act.

Mrs. Grier: Could we get some clarification? My knowledge is based on a judicial review of the Hydro transmission corridors where it was ruled that adequate notice was not given. I remember clearly the justices criticizing the Consolidated Hearings Act for not being clear as to under which of the various pieces of legislation the notice provisions applied, but that may have been changed. It was three or four years ago.

Mr. Ballinger: I am sort of in limbo here now because based on the information—I am at the liberty of the chairman. Obviously, we have two legal minds here.

Mrs. Grier: And one amateur. Could we stand it down and perhaps get an opinion later on?

Mr. Ballinger: Am I to take inference I am the amateur? I accept.

Mrs. Grier: No, I am the amateur.

Mr. Ballinger: Oh, I accept.

Mr. Chairman: Your intention is to stand down subsections 11(6), (7), (8) and (9)?

Mrs. Grier: Yes, and just get it clarified.

Mr. Ballinger: I think that is the fairest thing to do and let's get it clarified.

Mr. Wildman: Mr. Chairman, parliamentary government has been defined in the past as government by amateurs.

Mr. Chairman: You mean it never changes.

Mr. Wildman: Exactly.

Mr. Ballinger: That is what my kids say about parenthood.

Mr. Wildman: You know what an expert is: somebody who knows more and more about less and less.

Mr. Chairman: The other thing I note here is that you also have an amendment to subsection 11(10).

Mr. Wildman: Yes, it is a different type of amendment, so I think we can proceed with it.

Mr. Chairman: We can proceed with it.

Mr. Wildman moves that section 11 of the bill be amended by adding thereto the following subsection:

"Available material

"(10) All site plans, reports, inspection reports and other relevant material shall be made available for public inspection and copying before, during and after the hearing."

Mr. Wildman: I think this is obvious. The purpose of it is that no matter what kind of hearing it is, whether it is an Ontario Municipal Board hearing or a hearing under the Consolidated Hearings Act, members of the public have access to all the information that might be useful to them if they are intervening at the hearing.

Obviously, if I am an owner of adjacent property and I have objected or I want to be able to intervene in a hearing that is being held as a result of an objection, I want to have access to all of the information, not only during the hearing but before it, so that I can be properly prepared. That is the reason for the amendment. I hope it will be supported.

Mr. Ballinger: Again, since subsection 10 is really sort of an add-on to subsection 9, Mr. Scott, I wonder if you could explain the normal procedure. We have had some difficulty with accepting this particular amendment.

Mr. Scott: Yes. The normal procedure is that any information that is presented for a licence application, the documents and other supporting information such as the site plan and whatever else, is available to whoever wants to view it or purchase a copy of it, or get a copy. We normally give the information out free as long as it is not a substantial amount of work, where it ties people up for an inordinate amount of time.

Second, these matters are the subject of the Freedom of Information and Protection of Privacy Act. Under that legislation, if there is something that is deemed to be of an economic concern—I am not talking about it at the application stage now; I am talking about after the property is licensed, for example. There is a lot of information that a lot of people would probably like to get their hands on that falls under that legislation.



We give out any information that is not perceived as being private and confidential, mainly from an economic standpoint, because that is the information we would have that might fall in that jurisdiction. But it is a relatively small amount of information that might still be restricted because of that. The vast majority of information in our files is indeed available to the public.

Mrs. Grier: Under what section of the act are you required to give that out? Where does it spell out to me, Joe Citizen, that you will give me that application?

Mr. Scott: It does not have to be spelled out. The freedom of information and personal privacy legislation adequately covers that, so it is not required to delineate it in a different manner.

Mrs. Grier: So are you saying that I am going to have to make a freedom-of-information application in order to get a copy, or are you going to give me the copy?

Mr. Scott: No, we would give you a copy, and we have a manual that we are preparing that will document to our field people exactly what the circumstances are, so you would not have to go through a formal application under the freedom-of-information act. You would be able to come in and just request that information and you would get it.

Mrs. Grier: But if I am in some rural part of Ontario and this is the first time I have been faced with an application for a gravel pit in my backyard, and the representative of your ministry in the local office does not know that he is supposed to give me a copy, or is the brother-in-law of the operator or whatever, how do I know that I am entitled to a copy of the application unless I happen to get through on the phone to you?

Mr. Scott: Let me go back a step.

Mr. Ballinger: You sure get tough on the worst-case scenario.

Mrs. Grier: I have been through it a couple of times; that is why.

Mr. Scott: I was pleased that you were going to phone me anyway.

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Mrs. Grier: Now that I know you exist.

Mr. Scott: I am happy to hear that. What we are also going to do is prepare an applicant's guide and a citizen's guide for this legislation. So there will be a process that would be outlining to the applicant, whether he is from industry or is a private citizen who wants to make an application, how to go about it. What are the ministries they have to apply to? What are the pieces of information they have to get and so forth?

The second thing is the guide for the citizens: What the process is all about; what it really means to them; how they can get the information they want; what information they can get; and what they can do with it when they get it; and how they can make an appeal process work. All those types of information are being documented in a public information glossy document that we are going to be preparing.

Mrs. Grier: I can imagine.

Mr. Ballinger: Where are they going to be available?

Mr. Scott: They will be available at all the district offices of our ministry and they will be available to municipal types of libraries, offices or whatever. They may have an economic or public information centre in some municipalities. They could also be there. These are going to be free documents that will be available to the public.

Mrs. Grier: Make sure the minister's and the parliamentary assistant's name are on the back.

Mr. Ballinger: With the greatest respect, they cannot put the parliamentary assistant's name—that no longer applies on any booklets.

Mrs. Grier: What guarantee do I have that they will be available at the same time the legislation is proclaimed and not several months, if not years, later?

Mr. Scott: We have seconded a young lady from eastern Ontario—from our Napanee office—and she is going to be assisting us in co-ordinating some of these publications, and she is going to be working with the other interest groups and ministries to ensure there is a good cross-section of information in these booklets for the public.

Mrs. Grier: If you are going to do all of that, why do you object to merely stating that you are going to do all of that?

Mr. Scott: The concern we have with stating it is because—

Mrs. Grier: You might be held to it.

Mr. Scott: —it may also create problems for us. We are bound by the Freedom of Information and Protection of Privacy Act like everybody else, and that particular legislation is quite specific and quite overruling in terms of what it allows and does not allow. Virtually all of the information associated with an application is available. When we get beyond that stage, or there is information that is required of an economic nature where it could be used from a competitive standpoint, that is where we fall into difficulties.

Mrs. Grier: I give up.

Mr. Chairman: Any further comment? Bill, did you want to say something?

Mr. Ballinger: No, it is okay.

Mr. Wildman: The question I was going to raise is the one my colleague just raised: If you are going to do it, why not say that you are going to do it?

Mr. Chairman: I think we are ready to call the amendment inserting subsection 11(10). Those in favour?

Opposed?

Motion negatived.

Mr. Chairman: We have to leave section 11 open because of



subsections 11(6) through (9) inclusive. So we will go on to section 12. I believe that there is an amendment to clause 12(a).

Section 12:

Mr. Chairman: Mr. Wildman moves that section 12 of the bill be amended by adding at the end of clause (a) "and the preservation of the character of the environment."

Mr. Wildman: I am really just here to assist the ministry in dealing with an oversight, which I am sure is an oversight. What we are attempting to do is to put back into this legislation wording that is already in the Pits and Quarries Control Act. The section, as it now reads in this bill, states:

"The minister in considering whether to issue or refuse a licence shall have regard to,

(a) the effect of the operation of the pit or quarry on the environment."

This is fine, but for the life of me I do not understand why you would have less control in this than you have in the current act. If we are attempting to improve the act, why not leave the good parts of that act in place? It says that we should not only look at the effect of the operation on the environment, but for "the preservation of the character of the environment." So if you are talking about a rural area which is bush land, for instance, or, to use that infamous example, the school, you would want to look at the character of the environment. If it is already in the Pits and Quarries Control Act, I am sure that the government intended it to be in this act and it was just an oversight that it was left out.

Mr. Ballinger: Can I get Mr. Scott to qualify that? Well, let me respond.

Mr. Pollock: I did not say nothing.

Mr. Ballinger: If you are going to sit there, then let me respond accordingly. I understand what my role is here very seriously. There is no point in my trying to mislead. When you are talking about cross-referencing in the act, that is Mr. Scott's job. He is the staff person here. He is to give members of the committee the information they require, as he knows it, on the old act versus the new. That is not my role.

Mr. Pollock: I did not say nothing.

Mr. Ballinger: I just wanted to respond accordingly.

Mr. Scott: We have had problems with those particular statements from the old act that you are asking to be put into the new. We have rephrased section 12 to try to address those concerns. We have taken things like "the effect of the operation of the pit or quarry on the environment." We have tried to be a little bit more positive about how we are approaching it and the effect of the operation of the pit or quarry on nearby communities.

We have tried to be more specific rather than dealing with it in a more general sense, how it was in the old act, because we did have problems with that when we have had to go to court or have tried to go to court on things or have tried to get someone to do something through moral suasion. That is where we are coming from when we are putting forward a new approach.

We did look at the old act and we tried to capture what we thought were the best parts of the old wording. Believe me, instead of creating new words it would have been easier to use the old words, but we felt there were some problems there. It was not because we are trying to leave out anything that had great relevance. We feel that we have covered all of those in different manners already and we do not think that the old wording necessarily is really that helpful based on our personal experience, having worked in this for quite a few years.

All of those things you are looking for are entered in a different manner that captures them more positively, we believe, and more specifically by having more than—I think before we had only about five or six points and now we have got 10 or 12. We are trying to break all those issues out into more specific points.

Mr. Wildman: My only response to that is that there is no question that this section is an improvement over the old act. It just seems to me that where the old act does in fact have useful wording, we should also incorporate it. I again point to the school. I think if you would look at not only the natural environment, but the character of that environment—maybe I am wrong, maybe with the current act in place the minister just agreed to allow for another pit despite the fact that it is in the area of the school and the kids have to endure the dust and the noise. But if that is the case, then we have to limit the minister's discretion even more.

Mr. Ballinger: On a point of order for the record, Mr. Chairman: In all fairness, that particular application underwent an Ontario Municipal Board hearing, and the minister did not in his discretion—in fact, what the minister did do was take the seven conditions that the Ontario Municipal Board laid down at the end of the hearing and include an additional five after discussing with the local member and the local ratepayers' group. I think that the process with discretionary authority by the minister came into play very well on the Mulmur-Mono application, that in fact we strengthened and were tougher on the conditions than the Ontario Municipal Board was.

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Mr. Chairman: Any further discussion?

Mr. Ballinger: Excuse me one second, Mr. Chairman. I have to pull in one of my members. I am sorry, Mr. Fleet in his capacity in another committee is being briefed in the hall.

Mr. Fleet: I am quite pleased to speed things along as much as possible.

Mr. Chairman: Those in favour of the amendment to clause 12(a)? Those opposed?

Motion negatived.

Mr. Chairman: Shall clause 12(a) carry? Carried. Shall clauses 12(b), 12(c), 12(d), 12(f), 12(g) and 12(h) carry? Carried.

I believe there is an amendment to clause 12(i).

Mr. Chairman: Mr. Wildman moves that section 12 of the bill be



amended by adding at the end of the clause (i) "and the need for aggregate resources given availability from alternate sources."

Mr. Wildman: We have made these arguments before. I think the reason is clear. Again, we are saying that in issuing a licence, the minister should look not only at the quality and quantity of aggregate on the site, but whether or not there is a need for that quality of aggregate in the marketplace.

Mr. Ballinger: I think the arguments that we used previously apply. I do not see any need to flog it.

Mr. Chairman: Those in favour of the amendment to clause 12(i)? Opposed?

Motion negatived.

Mr. Wildman: I have a third amendment.

Mr. Chairman: To clause (i)?

Mr. Wildman: An addition, clause (ia).

Mr. Chairman: Shall clause 12(i) carry? Carried.

Mr. Wildman moves that section 12 of the bill be amended by adding to clause (i),

"(ia) the availability of the natural environment for the enjoyment of the public."

Mr. Wildman: It should be, "(ia) and the availability..."

So, again, not only are we looking at the quality and quantity of aggregate on the site, but whether this particular site and the area adjacent to it is an important natural environment that should be used for other purposes for the enjoyment of the public. So in other words, if you get aggregate in a park, it could continue to be a municipal park and the minister should consider that.

Mr. Ballinger: I always get nervous with worst-case scenarios. Quite honestly, the bill in itself I think is well covered, when we are addressing what the minister can or cannot do. Dale, maybe you might want to—if you want to talk about specifics, that is one thing, but in terms of generalities, I am convinced as someone living in an aggregate-affected municipality that the movement we are making here is so far ahead of where we have been. I understand Mr. Wildman being suspicious, but I somewhat believe he is being overly suspicious. Mr. Scott, I do not know of any example.

Mr. Scott: I personally do not know of examples. I know of quite a few parks that were previously gravel pits and they have been rehabilitated to parks, but I am not aware of any parks that are—

Mr. Wildman: I meant a natural park. I did not mean a municipal park or something.

Mr. Scott: Oh. Under the Provincial Parks Act, you cannot mine gravel in the park anyway, except where they might be building a road through

and just cutting and filling, so that has not been an issue with us and I doubt that it is going to be, based on the framework and the legislation for parks in Ontario.

In terms of what you are suggesting, the wording is largely coming out of the old Pits and Quarries Control Act. Some of the interest groups, or at least one of the interest groups, had mentioned this to me previously. We are going forward to get the new legislation because we really have had some serious problems with the wording in the Pits and Quarries Control Act.

A phraseology like that looks good, but my contention is that the breaking down, such as "the effect of the operation of the pit or quarry on the environment" and "any planning and land use considerations," are more specific. In our past experience, that basic motherhood type of statement in the old pits and quarries act was very difficult to interpret and very difficult to administer. We even had problems writing a manual for our staff as to what the devil it meant, because it was open to so many different types of interpretation and was basically a subjective decision you were having to make. There was nothing objective or specific about it, so we ran into problems and that is why we went away from that.

Mr. Wildman: Surely, Mr. Scott, you are not attacking motherhood now.

Mr. Scott: My wife might get mad.

Mr. Wildman: I could give you an example. There is an Indian band, one of the First Nations, in the area of Espanola. Adjacent to their reserve is a hill or a mountain, a beautiful site overlooking the lake, the north channel. Falconbridge wishes to quarry that site.

Traditionally, that Indian band has held that site to be a sacred one. I would think this provision would assist the minister in making a decision in this particular case, since surely the availability of this site for the enjoyment, in the wide sense, of the Indian band should be considered before Falconbridge is given the right to quarry that site.

Mr. Scott: I guess my contention is that there are numerous other parts of this ministerial decision-making outline that cover that same issue in more specific terms; we feel it is adequately covered through those, and probably better covered.

Mr. Wildman: I will talk to you about the issue afterwards.

Mr. Scott: I have already been talked to by quite a few people about that one.

Mr. Wildman: I wrote to the minister. Perhaps you wrote my response.

Mr. Scott: No, I was not fortunate enough to have that chance.

Mr. Chairman: Shall we call the vote on the amendment to insert clause (ia) in section 12? Those in favour? Opposed?

Motion negatived.

Mr. Chairman: Shall subsection 12(j) carry? Carried.

Subsection 12(k)? Carried.



There is a new amendment for section 12?

Mr. Wildman: In view of the position taken by the government all along that this bill is in the public interest and the minister will act in the public interest and therefore we do not need this statement in the legislation, I anticipate the government will take the same position. Therefore, I will withdraw the amendment.

Section 12 agreed to.

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Section 13:

Mr. Chairman: Shall subsection 13(1) carry? Carried. Subsection 13(2).

Mrs. Grier: Subsection 13(2) seems to me to make a mockery of the entire legislation if "the minister may, at any time, add a condition to a licence or rescind or vary a condition of a licence." I know it is subject to section 20, which merely reiterates the same thing. It is just the ultimate in ministerial discretion. It is not a section of the legislation we can support.

Mr. Chairman: Is there any further comment on subsection 13(2)?

Mr. Wildman: There are provisions in this bill, for whatever reason, that really make the rest of the bill irrelevant, and this is one of them. If the government is serious about this legislation, I cannot see why it would include in it such wide ministerial discretion, trying to pass a law and saying all these things have to be done for whatever reasons and so on and then adding in the same law that the minister may, despite everything else that has been said, "add a condition to a licence or rescind or vary a condition of licence," period. The ministry has said it will be developing criteria by which the minister will exercise discretion under this act. In our view, as I have said earlier, the criteria should be included in the act.

Mr. Ballinger: Again, I want to use the school site as an example. In regulatory legislation, when that particular application for additional licence for the property around the school site in the Mulmur-Mono situation was made, the minister referred that whole question to the Ontario Municipal Board. The Ontario Municipal Board held the hearing. All affected parties put their cards on the table. What happened with that was that once the Ontario Municipal Board laid down seven conditions that the applicant must fulfil prior to the minister issuing the licence in that particular case, the minister met with the local member, the ratepayers' association, the parents' association and the school and attached some additional conditions to that particular decision of the Ontario Municipal Board.

It is an example where the system does work and where that discretionary power from the minister's viewpoint is important, especially in regulatory legislation. The opposition can always argue, and I appreciate that, that the minister has too much discretionary power. Here is an example where the minister added conditions over and above and more stringent than those the Ontario Municipal Board added and it only reinforces our position from this point and on this side that with regulatory legislation the minister has to have that flexibility.

Mrs. Grier: Just as the parliamentary assistant has accused us on

this side of always painting the worst-case scenario, I would submit that this happens to be perhaps a good-case scenario, and you cannot call on one example to either prove or disprove your point. The ultimate worst-case scenario is if we have another minister, perhaps from a different persuasion, who is operating under this legislation and carries it to extremes by varying all of the conditions we have struggled to put in here today. So I do not think that is a good enough argument and I think the discretion, practically unfettered other than by a process by which notice of it has to be given which is allowed in this section, is too untrammelled and ought not to be supported.

Mr. Wildman: My perspective may be coloured by the number of years I have been in this place and by some of the individuals I have seen occupying the position of Minister of Natural Resources; not that I would name Léo Bernier.

Mr. Ballinger: Another direct hit.

Mr. Wildman: I would say that we must not just look at the current situation but be able to cover, as much as possible, changes in the situation. There may be different people with different agendas in the position of making decisions, and that is why the act should make it clear how the minister should make those decisions and what criteria he or she should use to make decisions.

Mr. Fleet: I just would like to preface by asking a question. Do I understand that the opposition does not have any problem with subsection 13(1)?

Mr. Chairman: It is already carried.

Mr. Fleet: That is right. But they have a problem with subsection 13(2). So you can issue a licence, according to that line of thinking, and attach conditions, but if you learn of something later you do not want to be able to start to vary in order to cope with whatever change took place. I do not understand that line of thinking.

Mr. Wildman: Our concern with subsection 13(2) is not that the minister may be able to vary a condition. We understand that. Our concern is that it does not give any indication of what kinds of considerations the minister will use in changing or rescinding conditions.

Mr. Fleet: I would have thought, then, that the words "Subject to section 20" would cause one to pay attention to the conditions the minister would deal with. If I am not mistaken, the most relevant one would probably be what I numbered on your list as number 25 of your proposals, where you propose to change what is in subsection 20(4). That talks about, if the minister proposes to add a condition, what he or she has to take into account.

I would have thought the principle you were worried about would be how, if at all, you restrict the conditions, rather than the principle of whether or not a minister should be able to add conditions, in which case I would think you would be in support of subsection 13(2) but may or may not have any number of concerns you would raise when we consider section 20.

Mr. Wildman: If that is an offer from the government that it will support that amendment we will be putting forward if we support this, then we would be willing to talk.

Mr. Fleet: That is a suggestion that your concerns would do better in that section. I cannot speak for the parliamentary assistant.



Mrs. Grier: You form your own opinion, surely.

Mr. Fleet: I just offered it—

Mr. Chairman: Mr. Pollock has been recognized, Mr. Fleet.

Mr. Pollock: If the minister has the authority to change certain things, then this bill—it is supposed to be such a grand bill—really will not be a heck of a lot better than the previous bill.

Mr. Chairman: Is there any further comment?

Mr. Ballinger: I would love to jump in with both feet on that one, Mr. Chairman, but I am not going to.

Mr. Pollock: Go ahead.

Mr. Ballinger: I am certainly not going to.

Mr. Chairman: In view of the hour, I appreciate that a great deal, Mr. Ballinger.

We are going to have a vote on subsection 13(2). Those in favour of 13(2)? Those opposed? Carried.

On subsection 13(3): Is there any problem with that? Carried.

Subsection 13(4)? Carried.

In view of the fact there is substantial disagreement with subsection 13(5), I think this would be an excellent time to adjourn for today. Before we do that, I would like to thank you all for a very productive day. I think we have made a great deal of headway. With that positive comment I would like to adjourn.

The committee adjourned at 4:59 p.m.

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Publication

STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

TUESDAY, APRIL 18, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Also taking part:

Cunningham, Dianne E. (London North PC)

Clerk: Carrozza, Franco

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

Searle, D. G., Solicitor, Legal Services Branch

Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section

Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, April 18, 1989

The committee met at 10:16 a.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Section 13:

Mr. Chairman: The chair recognizes a quorum. We were at subsection 13(5). There is both a New Democratic Party notice of amendment for that and a government motion, so I will entertain the government motion first.

Mr. Ballinger: Thank you, Mr. Chairman, so early in the morning. Subsection 13(5)?

Mr. Chairman: Mr. Ballinger moves that subsection 13(5) of the bill be struck out and the following substituted therefor:

"(5) The minister may, subject to subsections 69(3) and 70(3), issue a licence only if the site complies with all relevant zoning bylaws.

"(5a) The minister, if in doubt as to whether there is compliance with a zoning bylaw, may require the applicant to refer the matter to the Divisional Court for a declaratory judgement on the matter."

Do you wish to speak to the motion, Mr. Ballinger?

Mr. Ballinger: No, I think it is quite self-explanatory.

Mr. Chairman: Comments or questions?

Mr. Wildman: I am just looking at subsections 69(3) and 70(3), since the amendment refers to them.

It says in subsection 69(3) "...the minister shall issue a licence under this act in respect of every application under subsection (2) even if the requirements of section 8 have not been met and whether or not all relevant zoning bylaws are complied with."

Subsection 70(3) says, "The minister may issue a licence in respect of an application under subsection (1) whether or not all zoning bylaws are complied with."

Really, what I would like to know is how—you have an amendment here which says the minister may issue a licence only if the site complies with all relevant zoning bylaws, but you say subject to two other subsections which say the opposite.

Mr. Scott: Yes. Okay. That is basically a clarification for what we



would call the grandfathering clause for the properties that are presently licensed under the Pits and Quarries Control Act. For one reason or other, they may have been legal nonconforming uses that dated back 25 years and we are basically having to have that clause to grandfather them in so that we are not delicensing properties which have a legal status.

Mr. Wildman: So the other two sections to which I referred only deal with existing operations that are licensed under the Pits and Quarries Control Act.

Mr. Scott: Yes, and ones that come in late. That is correct.

Mr. Wildman: What does "ones that come in late" mean?

Mr. Scott: Within the six months. You see, someone may not have known about the new act going through. We will do our best to keep people informed, but there may have been someone out of the country or something of that nature. The classic case is where something is tied up in the state. We are trying to get it wrapped up, but we may not have all the paperwork finished within the six months, so we basically have a period of time there to bring those old properties into line during that phaseover period. That is what section 70 pertains to.

It is basically just a mechanism to keep existing properties active until such time as they can be licensed or to flip them over, even though the zoning may not be perfectly in place for those because of the legal nonconforming use status that existed many years in the past.

Mr. Wildman: Are you talking only about existing operations?

Mr. Scott: Yes.

Mr. Wildman: You are not expecting a flood of applications in the six months between the time this bill comes into effect and the end of the six-month period?

Mr. Scott: No, that is separate and they would have to go through the full requirements of the new act.

Mr. Chairman: Those in favour of the government motion relative to subsection 13(5)? Those opposed?

Motion agreed to.

Mr. Chairman: What is the status now of the proposed amendments?

Mr. Wildman: We believe our amendment to the bill should be put because it does not deal with the same thing. It deals with the Niagara Escarpment rather than the zoning bylaw.

Mr. Chairman: Would you like to put it then?

Mr. Wildman: We have heard the arguments, but we would like to make a point here. My colleague will put the amendment.

Mr. Chairman: Mrs. Grier moves that subsection 13(5) of the bill, as set out in the government motion, be amended by adding at the end thereof "and, if the site is within the area of the Niagara Escarpment Plan, the

provisions of the Niagara Escarpment Planning and Development Act and the Niagara Escarpment Plan."

Mrs. Grier: I know we had this debate yesterday about the question of development permits in the Niagara Escarpment Act. Since then, I had a conversation with some of the people who are very concerned about the effect of this act on the Niagara Escarpment and saw for the first time, quite frankly, the documents from the Niagara Escarpment Commission that had been submitted to the ministry with respect to this act.

I am afraid I am disturbed enough by the strength of the recommendations from the commission that the zoning bylaw in this act ought to be defined to include a development permit issued under the Niagara Escarpment Planning and Development Act. I am also disturbed about the fact that nowhere in this legislation is the Niagara Escarpment Planning and Development Act mentioned, other than in that zoning bylaw definition. It just reawakened all my fears that the concerns of the Niagara Escarpment Commission have not, in fact, been taken into account in the redrafting of the amendments. I am afraid I would like to have Mr. Scott rehearse that argument one more time.

Mr. Scott: I appreciate your concern because this act is quite long and complex. However, I still feel quite comfortable with the explanation I gave yesterday. If we turn to page 4 at the bottom of the page, under the definition of "zoning bylaw," anywhere in the act where we talk about zoning, that definition is activated. At the top of page 5 it talks about such things as the "Parkway Belt Planning and Development Act or any predecessor thereof and includes zoning control by a development permit issued under the Niagara Escarpment Planning and Development Act."

Mrs. Grier: That definition is no different in the copy of Bill 170 that we are dealing with today than it was in the copy that was first tabled.

Mr. Scott: That is right.

Mrs. Grier: And the recommendations from the Niagara Escarpment Commission were in response to the first draft of the bill and say very clearly that there are two concerns: one, the inclusion of development permits under the definition of a zoning bylaw is inappropriate and, two, the requirement to conform to the Niagara Escarpment Planning and Development Act or the Niagara escarpment plan is not mentioned in the act.

There is a recommendation of the staff to the Niagara Escarpment Commission that the wording be revised to delete the reference to a development permit and the Niagara Escarpment Planning and Development Act and that specific references to the need to conform to the Niagara Escarpment Planning and Development Act and the Niagara escarpment plan be incorporated in the act in the following locations: subsections 10(1), 10(2), 13(5), which is the one we are now addressing, and section 26.

Now you tell me and the chairman tells me that you have satisfied the concerns of the Niagara Escarpment Commission. Satisfy me.

Mr. Scott: Okay. When we got that concern voiced to us, we went to the Ministry of Municipal Affairs and consulted with people there. We also talked with the Niagara Escarpment Commission people. Indeed, I guess we have had two meetings with them.

Through those meetings, and especially with the Ministry of Municipal



Affairs, they felt that particular legislation was basically covered the way we have laid it out. It is like anyone else reading the legislation; unless you are quite familiar with how the legislation is interfingering and so forth, you would miss that right off the bat. I think that is what happened.

We have not heard any concern from them since we had those meetings. They seem to be happy, as far as we are aware. We are quite convinced, and I will get our legal adviser to back this up also, that it is all covered the way we thought originally it was covered. It does not omit them from making their comments known or having planning authority in their area.

Mrs. Grier: When you say "them" are you referring to the Ministry of Municipal Affairs or the Niagara Escarpment Commission?

Mr. Scott: The Niagara Escarpment Commission.

Mrs. Grier: And you are satisfied that they are quite happy with this amendment as the government proposes it.

Mr. Scott: Yes, as the government has it.

Mrs. Grier: Okay.

Mr. Wildman: I want to be delicate about this, because I have a great deal of respect for Mr. Scott.

Mr. Ballinger: Here comes the hook.

Mr. Wildman: I am sincere about that. But I am concerned about your last comment, because it leaves the impression that in discussions with the Niagara Escarpment Commission, your ministry, you specifically, have been informed by the Niagara Escarpment Commission that it is satisfied that your version is adequate to meet its concerns. Frankly, I do not believe that is the case. As I understand it, they understand your argument. They do not agree with it, but they are living with it.

Mr. Scott: I guess that is another interpretation that may exist.

Mr. Wildman: I will just leave it at that.

Mr. Scott: I think there is a difference of opinion within the Niagara Escarpment Commission staff as to what various individuals would prefer. I know that dichotomy does exist at that organization on this and many other issues.

Mr. Wildman: I will not pursue that. I am not suggesting that you are not being forthright. I am just saying that there may be another interpretation of the situation.

Mr. Fleet: I am having some difficulty understanding what the force of the objection is. I listened very carefully to Mrs. Grier, who said that she is fearful because somebody else has another interpretation. Without trying to be unfair to how you put it, that is what I understood it to be. It seems to me that rather than worry about what somebody else thinks, our function is to look at it and say, "What does the proposed wording mean?"

I looked at the Niagara Escarpment Commission proposal as well. Independently of anything that was said at the Ministry of Natural Resources,

my sense was that their concern was taken care of in the definition. One of the reasons I come to that conclusion is that if you take the interpretation of "zoning bylaw" and you take out the relevant portions at the end of it and substitute it into, for instance, subsection 13(5), you would reread subsection 5 so it would say that the minister may, subject to certain other provisions, issue a licence only if the site complies with all relevant zoning control by a development permit issued under the Niagara Escarpment Planning and Development Act. That is the way you would take the definition and apply it in the act.

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I do not understand, at this point in time, an argument that would suggest that there is a defect in that manner of construction. I do not understand there being any dispute as to what this is supposed to do. It is only a question of whether the construction accomplishes its stated objective. I think that accomplishes it in exactly the same way as the ministry has indicated here, and that that accomplishes exactly the same thing as the alternative method proposed by the Niagara Escarpment Commission at an earlier time.

I frankly think that the minister's system of doing it, the ministry's here, is consistent with most other legislation, and it is a little bit neater: You use an all-encompassing definition and then you can plug it in in different places in the act. It just makes the act read a little easier.

If there is another fear or problem or concern, I would like to hear about it, because at this point I do not know what the other concerns would be.

Mrs. Grier: I think my concern is that even though that was the zoning definition which was submitted to the Niagara Escarpment Commission, which deals on a daily basis with problems of trying to control development in the escarpment area, the commission flagged this as its first concern about the aggregates act. I do not have anything on paper which indicates to me that the reassurances that we have heard and that, I agree with you, sound very logical have in fact met their concern as to how the act is going to function in reality on a day-to-day basis.

I accept what you say, and presumably the proof is going to be in the implementation. But I have not, as I say, any evidence that shows me that the concern that they had and which they felt was valid enough to make to the Ministry of Natural Resources—and nothing has been done to change it—that they have been persuaded that that concern is not a valid one, as you are persuading us. No response has in fact changed the definition.

Mr. Ballinger: You have not won Bud over yet.

Mr. Fleet: I guess my sense of it is that if somebody has a concern, the onus is on him to come forward and tell us what it is. It is not enough to say: "Gee, we are concerned. We would rather have you do it another way." They have to at least give us some indication of what it is. I personally would be open to seeing a different way of doing it if they provided the evidence. They have not done that.

Mr. Wildman: On a point of order, Mr. Chairman: Could we have it clarified as to why the Niagara Escarpment Commission was not one of the agencies that appeared before us?

Mr. Chairman: From my point of view, according to the clerk, there



were nine umbrella groups, including the Niagara Escarpment Commission, that had been working with the ministry on a continuous basis. We as a committee contacted those groups and indicated that if they wished to appear before us, they would be most welcome, and they declined that invitation.

Mr. Wildman: I wonder if that was at the behest of the Ministry of Natural Resources and the Ministry of Municipal Affairs.

Mr. Ballinger: For shame.

Mr. Fleet: Do you see a conspiracy under every bush and tree or in every gravel pit?

Mrs. Grier: We certainly see conspiracies in gravel pits. I cannot think of a better place to have a conspiracy.

Mr. Chairman: Because he made the phone call, I would ask the clerk to repeat what he just indicated to me, for the record, if he does not mind.

Clerk of the Committee: When I called, Mr. Wildman, I spoke to Cecil Lewis. His exact words to me were, "Thank you, but we are satisfied with the amendments that we have seen."

Mr. Wildman: Thank you.

Mr. Chairman: The other question of clarification that I would like to put to the legislative counsel at this point is: Is Mr. Fleet's interpretation of this the way legislative counsel sees it?

Mr. Yurkow: Yes, it is.

Mr. Fleet: That is amazing.

Mr. Ballinger: Do not be so eager to speak. Just put three or four lawyers on a committee, because the lawyers agree.

Mr. Chairman: I have dealt with a number of lawyers in a room at a time before and I would like to know whether there is unanimity or whether we have three different points of view here or more.

Mr. Yurkow: Often when laymen look at legislation, they have concerns because they like to see certain things highlighted, which from your perspective is valid but it does nothing to change the nature of the legislation. I think all that the amendments would do is add more words to the act. There is no change in emphasis or effect.

Mr. Chairman: Thank you very much. This is a very important point to me personally for obvious reasons, and this is why I asked for this clarification, because if there is any doubt with respect to that interpretation in the three sections you quoted before, Mrs. Grier, I would be as concerned as you are about it. I feel fairly comfortable now.

Mr. Wildman: Mr. Chairman, I would just remind you of what William Shakespeare had to say about lawyers.

Mr. Chairman: Would you mind repeating it?

Mr. Fleet: We are still alive.

Mr. Chairman: I think we are ready for the question. Those in favour of the amendment put by the New Democratic Party? Those opposed?

Motion negatived.

Mr. Wildman: Following what I just said, I am going to need some legal advice on my next amendment.

Mr. Chairman: Lots of luck.

Mr. Ballinger: Which of the three do you want to ask?

Mr. Wildman: We have just passed a government amendment in subsection 13(5a) which allows the minister discretion, if there is doubt about a zoning bylaw, whether there is compliance with a zoning bylaw, to refer the matter to the Divisional Court for judgement.

We have an amendment before the committee—I have not put it yet—but the amendment I was about to put would allow the board, which under this bill is the Ontario Municipal Board, to do the same thing as the government amendment allows the minister to do. I would want to put that amendment, but the reason I need advice is really to ask whether there is any problem with giving the same discretion to the municipal board under the bill as the government amendment has given to the minister. I do not think there is, but there may be some legal problem with it.

Mr. Yurkow: I am not aware of any problem.

Mr. Searle: I wonder if it is a redundant provision in view of subsection 27(2) of the act which makes the rules of procedure and practice of the municipal board applicable to hearings which are brought within its jurisdiction. One of the powers of the board, of course, is to state a case in writing for the Divisional Court upon any questions of law which arise before it.

Mr. Wildman: This is subsection 27(2)?

Mr. Searle: Subsection 21(2), sorry.

Mr. Wildman: I see. You are saying that under the rules and procedures of the Ontario Municipal Board, under the Ontario Municipal Board Act, they can refer something to the court for judgement.

Mr. Searle: Yes.

Mr. Wildman: In that case, I withdraw the amendment. I have not put it yet, so I will not put it.

Mr. Chairman: I think we need a motion now to carry subsection 13(5) as amended.

Clerk of the Committee: It was carried.

Mr. Chairman: Was that carried? Okay. Subsection 13(6), then. Carried.

Section 13, as amended, agreed to.



Mr. Chairman: It has been suggested that perhaps at this point we should go back to section 5 which was not carried in its entirety yesterday and address the outstanding concerns there, and possibly section 11. Those are the two sections that are still open. I think it would be a good idea if we tidied these things up as we go just to keep track.

Mr. Ballinger: With the greatest respect, the issue as it relates in section 5 to the time frame of initiation, we have not had an opportunity yet to discuss. I suggested yesterday that I would like to see us bring that one in at the tail end. We did not have an opportunity to get together last night to discuss that because I had a commitment with—

Mr. Chairman: Can we make a policy then of what we are going to do with these? Should we do them all at the end, do them one way or the other?

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Mr. Ballinger: I think that would be a lot better.

Mr. Wildman: What might be helpful is the legislative counsel has kindly provided me with a better wording than the one I gave you yesterday.

Mr. Chairman: I am glad to hear that.

Mr. Wildman: Maybe I could move it and we could stand it down until the end.

Mr. Chairman: As you wish.

Mr. Wildman moves that section 5 of the bill be amended by adding thereto the following subsection:

"Delayed application

"(4) On and after the third anniversary of the coming into force of subsection (1), this act and the regulations apply to all private land in Ontario."

Could we set a procedure on this? If we are leaving these until the end, it would be really helpful if they were moved like this as we get them so that they can be reproduced for all members of the committee. That will be standard procedure from now on.

Section 11:

Mrs. Grier: On subsection 11(6), I have had a conversation with legislative counsel and I am prepared to withdraw my amendment to that, which I think was to add the words "consolidated board hearing."

Mr. Chairman: Is that in all parts, subsections 6, 7, 8 and 9?

Mrs. Grier: To all parts. If you want to deal with that section now, you can get it off the table.

Mr. Chairman: The thing we should do then is go back and carry section 11 in its entirety.

Section 11 agreed to.

Section 14:

Mr. Chairman: Addressing the next section, subsection 14(1) seems to be all right. Carried.

Subsection 14(2)? Carried.

Subsection 14(3)? Carried.

Subsection 14(4) has a government amendment proposed.

Mr. Ballinger moves that subsection 14(4) of the bill be amended by inserting after "manner" in the last line "and for such purposes."

Mr. Pollock: I have an amendment.

Mr. Chairman: To subsection 14(4)?

Mr. Pollock: Yes.

Mr. Chairman: We will handle this one and take that next. Is there any discussion with respect to "and for such purposes"?

Mr. Ballinger: This is one of those amendments where there are about four different viewpoints. The operative words in this particular case are "the minister may." About four or five of the groups that appeared before us had some concern about the levy, in what direction it would go. The concern of the Association of Municipalities of Ontario was that there be no direction. They did not want any. By adding this in, the operative word is "may." It does give the ministry or the minister in this particular case the option of making—

Mr. Wildman: No way. You are talking to subsection 14(5):

Mr. Ballinger: I am talking to subsection 14(4).

Mr. Wildman: There is no "may" in subsection 14(4); you are talking to 14(5).

Mr. Chairman: Subsection 14(4) is "shall be dispersed to such municipalities and in such amounts, manner and for such purposes."

Mr. Ballinger: I had two here that are going "may" and "shall."

In subsection 14(4), the discussion obviously centres around the regulations. This is almost like an operative clause for the minister, a regulation clause, if needed, to make a decision on direction. When we are drafting the regulations. Dale, you might want to give some examples or even qualify better than I exactly the purpose of this.

Mr. Scott: This allows for the dedication, if necessary, of the remuneration to the municipalities from the production levy. We have this power in the regulations to do this, if and when it ever becomes necessary for some purpose.

The intent is that the municipalities can use the money for whatever purpose they want under this legislation and it is not meant as a means to restrict their freedom.



We feel it is probably advisable to have this enabling clause in there in case there is anything in the future that we feel should be highlighted for money to be spent on because of problems that result because of pits and quarries in a given area. So the type of work that is required in a given area could be done with this money.

Mr. Wildman: We do not have any problem with this, except that what you are basically saying is that in the regulations, you may prescribe a percentage of the licence fees collected and that will be disbursed to the municipalities "in such amounts, manner and for such purposes as are prescribed."

In essence, what the section says is you will make regulations which will determine how much and for what purposes the municipalities will get money.

Mr. Ballinger: If necessary.

Mr. Scott: If necessary. That is right. It is just a clarification, basically. We recognize that we had not made it broad enough when we originally wrote it and we have so clarified with the addition.

Mr. Chairman: Those in favour of the government amendment? Those opposed?

Motion agreed to.

Mr. Chairman: Mr. Pollock has advised us that there is a subsection 14(4a).

Could we have subsection 14(4), as amended, carried? Carried.

Mr. Pollock moves that section 14 of the bill be amended by adding thereto the following subsection:

"(4a) The prescribed percentage of the total of the annual licence fee disbursed to such municipalities shall not be deducted from any amount of transfer to the municipalities from the provincial Treasury under the municipal transfer payment program."

Mr. Pollock: This means that municipalities have a fear that if this money goes to help fix the roads, then the Treasurer might come along and deduct the amount of transfer payment they get. They are quite concerned about it. That is what my amendment hopes to put in the legislation.

Mr. Chairman: Could we have the written amendment please? Mr. Wildman has indicated he wishes to speak to it.

Mr. Wildman: I will defer to a member of the government side if they wish to go ahead.

Mr. Ballinger: I guess this is sort of my role to jump in at this stage. I would really want to be able to think this one through a bit.

Mr. Pollock: That would take too long.

Mr. Fleet: Beneath that kind exterior lies a cold heart.

Mr. Ballinger: Four, five, six, seven, eight, nine, ten. Okay, I am all right now.

First of all, my gut reaction from the municipal point of view is that I do not understand the amendment or why it is here.

Mr. Pollock: I think it is straightforward.

Mr. Ballinger: What is the purpose of the amendment?

Mr. Pollock: Basically, if a certain municipality gets a whole lot of money out of a gravel pit by their prescribed fees, then the Treasurer might well come along and say: "You people got a whole lot of money out of that particular operation; we're going to cut your transfer payments."

Mr. Ballinger: Are they doing that now with lot levies?

Mr. Pollock: No.

Mr. Ballinger: We are not talking about provincial money here.

Mr. Pollock: They certainly can.

Mr. Ballinger: Excuse me just a second. We are not speaking of provincial money here. This money is not being raised by the Treasury and being transferred to the municipalities. This is money that is being generated from a local business, and the only transfer that is done is that it goes in and out. It is just a shifting of paper. The Treasury collects the money and that money is passed on, but it is not a tax. It is not generated by the province, it is generated by the local industry.

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Mr. Pollock: I realize that.

Mr. Ballinger: It is no different than a lot levy whereby a municipality generates revenue on its own for development within its municipality. The Treasury does not say, "Well, gee, the city of Mississauga collected \$40 million in lot levies last year, so we are going to transfer \$40 million less."

Mr. Pollock: I did not say transfer \$40 million—

Mr. Ballinger: If we were talking about a tax, I might understand, but we are talking about revenue that is generated locally by an industry which has nothing to do with the province whatsoever. They are only the transfer of the money. Certainly we will not be supporting the amendment.

Mr. Wildman: I think Mr. Pollock's amendment makes very good sense. Obviously, as Mr.—

Mr. Fleet: That proves our case, Bud.

Mr. Ballinger: I was trying to be kind.

Mr. Wildman: As Mr. Ballinger has indicated, these are not provincial moneys and they are not coming from the provincial Treasury, that is quite true, but as I understand the relationship between the Ministry of



Municipal Affairs and, particularly, small municipalities in the province, Municipal Affairs looks at the financial state of the municipality and that helps to determine what rate of assistance it receives from the provincial Treasury.

If, for whatever reason, Uxbridge, for instance, were to suddenly get a lot of money out of fees from aggregate operations, the ministry might say, "Well, this municipality is certainly doing very well, it does not need as much assistance as it might have needed prior to receiving these kinds of levies," and it might get less money. So I think Mr. Pollock's suggestion is a very good one.

Mr. Ballinger: Just in closing, we could probably have a wonderful debate on this. On behalf of the government, I disagree. I think it is a cumbersome amendment and what we have been trying to do is have fairly clean legislation here so that it is fairly well understandable. There is a lot of assumption here that I do not think should necessarily be included in the act whatsoever.

Mr. Pollock: I take offence to Mr. Ballinger's comments that is a cumbersome amendment. It is straightforward.

Mr. Ballinger: It is very cumbersome.

Mr. Pollock: It just lays it right out.

Mr. Ballinger: You are assuming something that you have no fact or evidence to back up.

Mr. Pollock: Oh, no. It has happened in the past, and I am sure it will happen in the future, that once one municipality gets a windfall, for whatever reason, governments have a habit of coming along and cutting their transfer payments.

Mr. Faubert: You guys used to do that.

Mr. Ballinger: With the greatest respect, I suggest to Mr. Pollock that you travel the municipalities like Caledon, Milton and Uxbridge, where the majority contributors to the economy of Ontario for aggregate are, and you tell them they are going to get a windfall? I suggest to you that if you make that comment, you will not get out of there alive.

Mr. Pollock: I did not say they were going to get a windfall, I said that they should not get their transfer payments cut. You are changing the whole thing around.

Mr. Ballinger: No, I am not changing it around at all.

Mr. Pollock: You are.

Mr. Ballinger: You are the guy who talked about the windfall. How can you perceive this as being a windfall?

Mr. Pollock: I did not use the word "windfall," you did.

Mr. Ballinger: Excuse me. The record will indicate you used the word "windfall."

Mr. Pollock: Not in the amendment.

Mr. Wildman: I think the discussion is being skewed. The point is this: If there are additional revenues to the municipality from whatever source, in this case a gravel pit operation, for instance, will that affect the transfer payments that will be recommended by Municipal Affairs to the provincial Treasury? I think it quite possibly could. What Mr. Pollock is suggesting is that it should not, and I think that makes very good sense.

We just have to look at what has happened this year with the freezing of transfer payments from Municipal Affairs to the municipalities, the freezing of transfer—

Mr. Ballinger: Come on, Bud. I do not think we can isolate municipalities out with that. That is a broad policy.

Mr. Wildman: That is a broad policy, and it is also affected their grants—

Mr. Ballinger: Consistent with our priorities this year as a government.

Mr. Wildman: Transfer payments from the Ministry of Transportation to municipalities for roads is another example. The government, for whatever reasons, whatever its priorities, has determined that the municipalities are doing well enough in Ontario that they do not need increases, and they may in fact decide this in relation to individual municipalities as opposed to across the board as well.

Mr. Chairman: Is there any further discussion? I would like to call the amendment then. Those in favour? Those opposed?

Motion negatived.

Mr. Chairman: I have notice of an amendment to subsection 14(5) by the New Democratic Party.

Mr. Wildman: Actually, there is a government amendment. If you look at the two amendments, Mr. Chairman, they seem quite similar.

Mr. Ballinger: With the greatest respect, Mr. Wildman, would you like to flip? You know, we are always being accused of not listening or—

Mr. Wildman: Go ahead.

Mr. Chairman: I believe I heard the government defer to the NDP amendment. Did I? Is that your wish, Mr. Ballinger, or would you like to go ahead?

Mrs. Grier: He seems to want to take credit when we are heard.

Mr. Ballinger: Well, no, actually, we were trying to be very fair.

Mr. Chairman: The chair would like to hear an amendment.

Mr. Wildman: Mr. Ballinger can move the amendment.



Mr. Ballinger: Actually, on this particular one, what we tried to do—

Mr. Chairman: I never thought I would ever see this.

Mr. Ballinger: No, with the greatest respect, now—

Mr. Wildman: In that case, Mr. Chairman—

Mr. Ballinger: Let me make this point in respect to what Mr. Wildman did for us: He got the amendments to us. We sat down. We reviewed them all. We looked at the ones we thought we could work into the legislation and ones that we could not. The ones we felt comfortable with, we did that. We are more than happy in this particular case, Mr. Wildman, to recognize the work you did.

Mr. Chairman: The chairman will entertain your amendment, Mr. Wildman.

Mr. Wildman: All right.

On behalf of the Minister of Natural Resources, I move that subsection 14(5) of the bill be amended by striking out the word "may" in the second line and inserting in lieu thereof "shall."

That is what the government amendment also does.

Mr. Chairman: Any discussion?

Mr. Wildman: The amendment deals with the spending of the fees in subsection 33(2), which basically says, "The minister may disburse any portion of the fees set apart under subsections 14(5) and 24(4) for" the survey studies on "the location, condition and rehabilitation of pits" and for "the rehabilitation of abandoned pits and quarries."

It takes away the discretion of the minister and makes it a requirement under subsection 14(5) that a prescribed percentage shall be set apart for these purposes. It does not completely just take away the discretion of the minister, because obviously the minister will determine the percentage in the regulations, but it will be used for the studies and for the rehabilitation of abandoned pits. We are very happy the government has agreed with our position.

Motion agreed to.

Mr. Chairman: Shall subsection 14(5), as amended, carry? Carried.  
Shall subsection 14(6) carry? Carried.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16:

Mr. Chairman: Shall subsection 16(1) carry? Carried. Shall subsection 16(2) carry? Carried.

I have notice of a government amendment to subsection 16(3).

Mr. Ballinger moves that subsection 16(3) of the bill be struck out and the following substituted therefor:

(3) The minister may require any amended site plan to be prepared under the direction of and certified by a person referred to in subsection 8(4).

Mr. Ballinger: Mr. Scott, perhaps you would not mind just explaining the housekeeping, please.

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Mr. Scott: Yes. This is a cross-reference amendment. It is necessitated by the amendment to subsection 8(4), with the same purpose in mind, that we are basically trying to ensure that we are not making it that the engineer, the surveyor or the landscape architect has to draw the plans himself. We are recognizing that it is the draftsman who is actually doing the work and that the certified person is just overseeing him or managing what is going on, and is professionally responsible for it.

Motion agreed to.

Mr. Chairman: Shall subsection 16(3), as amended, carry? Carried. Subsection 16(4)? Carried. Subsection 16(5)? Carried.

Section 16, as amended, agreed to.

Section 17:

Mr. Chairman: Shall clause 17(1)(a) carry? Carried. Clause 17(1)(b)? Carried.

I have a notice of an amendment by both the government side and by the NDP for clause 17(1)(c).

Mr. Ballinger: This is really a clarification of intent.

Mr. Chairman: Mr. Ballinger moves that clause 17(1)(c) of the bill be amended by adding at the end thereof: "concerning the licensee's compliance with this act, the regulations, the site plan and the conditions of the relevant licence."

Mr. Ballinger: Again, Mr. Scott, perhaps you would explain the clarification of intent as it relates to this clause.

Mr. Scott: The clarification here was to ensure that the municipality was aware of all the different things it could comment on. In so doing, we are hopeful they will give us full and detailed comments on all those different aspects when they are making comments to us, either on an annual or on the four-year review.

Motion agreed to.

Mr. Wildman: I have a further amendment.

Mr. Chairman: Mr. Wildman moves that clause 17(1)(c) of the bill as amended by the government motion be further amended by inserting after the



word "located" in the second line the words "and by any other interested municipalities."

Mr. Wildman: The reason for this amendment is to ensure that the kinds of comments Mr. Scott was referring to would be open not only to the municipality in which the site is located, but perhaps to adjacent municipalities. For instance, if there were going to be a lot of haulage through adjacent municipalities, along their roads, those other municipalities might certainly be interested in making comments to the minister as to the effect the aggregate operation and the hauling of the aggregate to market might have on their municipalities and the residents of their municipalities.

Mr. Ballinger: One of the beauties of the planning process in Ontario is that any municipality, any body, anyone living in Ontario has the right to respond to anyone at any time. We looked at this. We just do not happen to think that putting this type of amendment in the legislation is necessary. As an example, in my own municipality of Uxbridge, if there is an application within Uxbridge, obviously the market is Toronto. When aggregate comes from the source, it goes through several municipalities on its way to the market. There is no question about that.

Through the planning process those municipalities may, and it has been done from time to time, write to the minister, as an example. They may make an appearance before a hearing if they so wish to ascertain or to put forward their argument about the impact it will have on their community. But by virtue of putting through an amendment that says the minister must notify any other interested municipality—we just do not think that is necessary. In the aggregate affected areas, those municipalities that want to can write to the minister.

Mrs. Grier: Given what Mr. Ballinger said, would he not agree that by specifically saying in this section "comments provided by the municipalities in which the site is located," we are explicitly limiting the minister to taking into account only the comments of that particular municipality?

I agree with you that all municipalities sometimes comment on applications, but here we seem to be precluding the minister from taking into account the comments of anything other than the municipality in which the site is located.

Mr. Ballinger: I will get Mr. Scott to explain to you from a staff point of view the intent of that particular clause. "Any other interested municipalities": When you start thinking about that, does that mean that somebody in Cornwall may want to respond to an application in Windsor, as an example?

Mrs. Grier: Well, they may. In fact, what you are citing is the reason why municipalities do get involved.

Mr. Ballinger: They have that right and it is not necessary to include it in the legislation.

Mrs. Grier: But here you are explicitly excluding it.

Mr. Ballinger: Mr. Scott, do you want to just—

Mr. Scott: Yes. By my reading, and our legal adviser has just indicated to me, we do not think we are necessarily excluding them. All we are saying is that we will very adamantly be going to the municipality in which the pit or quarry does exist, because it is the one that is going to have the most impact. By and large, if you have the pit in your backyard, you are the one who is going to have the most interest, the most concerns, the most involvement in fixing it or working to make it better.

What we are trying to highlight here is not that we will not talk to anyone else, that we have the door closed to anyone else. All we are trying to highlight is that there is going to be a very formal process established for the recipient municipality which has that pit or quarry in it. That is what we are trying to get across here. We feel that is the particular agency or body we want to have most of our dealings with. We are not saying we will not deal with anyone else.

Indeed, in some municipalities, at the county or regional government level, they may want to have a pit or quarry committee that will pull together members from all those municipalities in their jurisdictional area that can give us input at any given time, and we can receive that. Even if that does happen, we want to have a separate relationship with the host municipality. That is the real essence of that particular clause.

Mr. Wildman: We accept the position that is put forward. That is why we voted for the government amendment that there should indeed be a relationship between the municipality that has the site located within its boundaries and the ministry. That is why we are also happy to see the word "shall" in the subsection, that the minister "shall" consider the comments.

I accept what Mr. Scott is saying, that this does not preclude other municipalities, whether they be municipalities through which trucks will travel or municipalities that need the aggregate and would like to support the continuing operation of aggregate extraction. The problem is, the minister does not have to consider their comments, because it says the minister shall consider all comments of municipalities within whose boundaries the site is located. It does not say the minister shall consider the comments of other municipalities that are interested in that operation. What we all know is that the minister "may," and that is nice; we would just like to make it so that he has to.

Mr. Pollock: I have the highest respect for Mr. Scott and his comments, but when he says that under—

Mr. Ballinger: This is getting awful dangerous in here.

Mr. Pollock: —under the norm, the municipality that has the gravel pit in it would be the one that has the most impact on it, I have a situation, and this does exist, where—this is changing the subject slightly—there is a large lake with a lot of cottage development, and that lake is in another municipality and in another county but the road that goes up to that lake goes through one of my townships. They have very little assessment and they are expected to keep up that road. It has been a real burden on them.

In other words, there is a situation where the revenue actually goes into another municipality, but an adjacent municipality has the burden of keeping up the road to service that lake, and it could be the same for a gravel pit operation.



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Mr. McLean: That is a fact now in lots of cases.

Mr. Pollock: There should be some wording in there to say "adjacent municipalities."

Mr. Wildman: If you want to move an amendment to my amendment—

Mr. Pollock: Well, I do not know.

Mr. Chairman: Mr. Ballinger, further comments?

Mr. Ballinger: No, I think all sides are on the table in the debate.

Mr. McLean: Would the government accept an amendment that would classify an adjacent municipality—

Mr. Wildman: Instead of all interested?

Mr. McLean: —instead of all interested ones?

Mr. Ballinger: Like any other amendment, other than the last one, which was just sort of dropped on the table, if it is tabled, we will certainly stand it down and take a look at it, as we will with Mr. Wildman's in section 5.

Mr. McLean: I think it is important because I have Carden and Mara townships. They all drive through Mara township, but it all comes out of Carden, on the other side of the town line, and that is thousands of transports a month. It may be worth while taking a look at it.

Mr. Ballinger: I do not think it is necessary to respond. If somebody wants to make that amendment, we will certainly stand it down and discuss it and get back.

Mr. McLean: Would the clerk take down an amendment in writing?

Clerk of the Committee: Yes.

Mr. Chairman: You are going to modify it to "adjacent municipalities"?

Mr. McLean: Yes. Also moved, Mr. Chairman.

Mrs. Grier: We will withdraw our amendment and support that amendment, with the change that instead of "by any other interested municipalities," it be "by adjacent municipalities."

Mr. Ballinger: I have seen this before, two friends and a stranger.

Mrs. Grier: Well, you benefited from it once, so—

Mr. Ballinger: Touché.

Mr. Chairman: So the NDP amendment has been withdrawn and the

proposed amendment now reads "by adjacent municipalities" and we are taking it under advisement at this point.

Mr. Wildman: We are going to stand it down.

Mr. Chairman: Okay. We are going to stand it down then.

Mr. Ballinger: Could we discuss that at the end, along with clause 5, the section that relates to the three-year term?

Mr. Chairman: Shall we now then consider subsection 17(2)? Agreed? Agreed. Subsection 17(3)? Agreed.

I have a notice of an amendment with respect to subsection 17(4) by the government side.

Mr. Ballinger: Again, it is a clarification of intent.

Mr. Chairman: Mr. Ballinger moves that subsection 17(4) of the bill be amended by adding at the end thereof "concerning the licensee's compliance with this act, the regulations, the site plan and the conditions of the relevant licence."

Mr. Ballinger: Mr. Scott for explanation, please.

Mr. Scott: It is the same basic explanation I gave before. We just want to ensure that it refers back to the same broad area of concern that they can comment on and make their concerns known about.

Mr. Chairman: Is there any discussion? Those in favour of the amendment? Do you want to talk about it?

Mr. Wildman: The reason I am a little slow on this is that I am trying to put it in compliance with the proposed amendment that was made just a moment ago. I do not know whether it is necessary to suggest that an adjacent municipality make comments here as well. That is my problem.

Mr. Ballinger: No, we are speaking of the site plan here, Mr. Wildman.

Mr. Wildman: I will leave it. That is fine.

Mr. Chairman: Those in favour of the amendment? Opposed?

Motion agreed to.

Mr. Chairman: Shall subsection 17(4) carry as amended? Carried.

Shall subsection 17(5) carry? Carried.

We have to leave section 17 in its entirety open because of clause 17(1)(c).

Section 18:

Mr. Chairman: Shall subsection 18(1) carry?

Mrs. Grier: No, Mr. Chairman, it is a whole section and refers to



the issue of ministerial discretion, which again is too wide, and there are no criteria established binding the manner in which the minister should act. So we are opposed to the entire section.

Mr. Chairman: All of section 18?

Mrs. Grier: Yes.

Mr. Wildman: But we are willing to work to make it better.

Mr. Chairman: We are still going to have to take it a subsection at a time, so is there any discussion specifically with respect to subsection 18(1)?

Mrs. Grier: There is a government amendment.

Mr. Chairman: No, that is an addition. Is there any discussion with respect to subsection 18(1) by itself? Carried.

Now we have government amendment subsection 18(1a).

Mr. Ballinger moves that the bill be amended by adding the following subsection to section 18:

"(1a) Any municipality served with notice under clause 20(4)(d) may provide the minister with comments on compliance with this act, the regulations, the site plan and the conditions of the licence within 30 days after service of the notice and the minister shall take no action until the 30 days have elapsed or comments have been received, whichever occurs first."

Mr. Ballinger: I just want to explain the amendment. It is something new in the transfer of licence process, whereby normally a licence could be transferred and a municipality would be notified after the fact. This particular amendment is, in my opinion, wonderful. It allows for the opportunity for comment prior to the transfer of the licence.

Mrs. Grier: I have difficulty understanding the reference to "Any municipality served with notice under clause 20(4)(d)." Clause 20(4)(d) is shown on the next amendment that is coming. It is not now in the redrafted bill and all it says is that if the minister proposes to consent to the transfer of a licence. It does not provide conditions for—oh, I guess it does.

Mr. Wildman: On a point of order, Mr. Chairman: Can we carry this one until we have carried the other one? I mean, how can you pass an amendment that refers to something that—

Mr. Fleet: You have to do one before you can do the other. It really does not make much difference which one you do first.

Clerk of the Committee: You realize that you have to come back to do this again.

Mr. Chairman: The clerk advises me we should do clause 20(4)(d) and then come back and do this.

Mrs. Grier: I have a further question, if I may, and again it refers to the Niagara Escarpment Commission. Nowhere in this are we providing that the escarpment commission be provided with notice. We have left it to the

municipalities or the regional municipalities. The recommendation of the escarpment commission in its original brief was that there ought to be notice given to it. I would like to hear the reasons why or how they were satisfied to withdraw that concern.

Mr. Scott: We view this just like dealing with the Ministry of the Environment and other agencies. We are all one government and we deal with those different agencies within the government through the normal process of government co-operation.

Mrs. Grier: Well, is circulation to the Niagara escarpment automatic? Do we have any evidence that where we begin, as in this amendment, to put in a time frame in which the response has to be within 30 days---what guarantee do we have that in fact it will trickle down to the Niagara Escarpment Commission in what is a fairly tight framework?

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Mr. Scott: Yes. We do have a process within government between the various ministries, and there has been direction from the Ministry of Municipal Affairs, which has cabinet jurisdiction over the Niagara Escarpment Commission, that we work in a framework of co-operativeness between the various agencies and ministries.

We do have as part of our Manual of Administration how that is to be implemented, and that is part of the government rules that we have to follow. They would get the same amount of time as the municipality would get, because it would go directly from our office to the escarpment commission's office itself. It does not go through Municipal Affairs and find its way down through a circuitous route.

Mrs. Grier: I see. You communicate directly with the escarpment commission?

Mr. Scott: Just like we do with a municipality or---

Mrs. Grier: But you do not ever say that. That, again, is going to be in one of your booklets about how this all works, is it?

Mr. Scott: It will be in the internal directives of the government as to how that works.

Mrs. Grier: Oh, I see. You have a bridge somewhere on this.

Mr. Scott: This has been in place for several years; for numerous years actually.

Mrs. Grier: Okay.

Mr. Wildman: I just thought I should flag to you, Mr. Chairman, that we are going to move an amendment to this amendment when we deal with it. That amendment would be to delete all the words after the word "elapsed" in the amendment.

Mr. Fleet: Sorry. You have enough amendments to an amendment here. Which one are you talking about?

Mr. Wildman: I was talking about the government amendment.



Mr. Fleet: Which government amendment?

Mr. Chairman: We are still talking about subsection 18(1a).

Mr. Fleet: Thank you.

Mr. Wildman: When we deal with it, we will be moving a subamendment to delete all the words after the word "elapsed" in the amendment.

Mr. Ballinger: In other words, you are planning the 30 days as sort of the operative time.

Mr. Fleet: You want to stop the ministry from acting for a period of 30 days.

Mrs. Grier: Yes. We consider it dangerous to assume that all comments have been received. How do you know? There may be somebody who is last-minute, as sometimes the government even is with its own amendments to legislation.

Mr. Fleet: I cannot imagine that ever occurring, but it is possible, I suppose.

Mr. Ballinger: It is tough being a rookie in this game.

Mrs. Grier: You are all rookies.

Mr. McLean: We can tell that by the amendments.

Mrs. Grier: After 40 years they are going to get it right, maybe.

Mr. Ballinger: I am going to tell you, Mr. McLean.

Mr. McLean: Go ahead. I am listening.

Mr. Ballinger: I shall tell you later.

Mr. Chairman: I think we should probably stand down subsection 18(1a) with the way the discussion is going on it for now. The clerk suggests that what we do is continue on with the other subsections of section 18. When we get to the appropriate part in section 20, we will then come back and finalize subsection 18(1a) and tidy it all up, because there—

Mr. Ruprecht: Oh, Mr. Chairman, are you going to stop us because we are having some fun here? This is making the committee interesting. Why not continue with the remarks of Mr. McLean and Mr. Ballinger?

Mr. McLean: Did we wake you up, Tony?

Mr. Ruprecht: You maintain this kind of a framework, Mr. Chairman, and you will have more attendance here.

Mr. Chairman: Subsection 18(2). I have not been advised of anything there. Does that carry? Carried.

I have a proposed NDP amendment to subsection 18(3).

Mr. Wildman: Yes.

Mr. Chairman: Mr. Wildman moves that subsection 18(3) of the bill be amended by inserting, after the word "upon" in the third line, the words, "the Niagara Escarpment Commission for licences within the area of the Niagara Escarpment plan, upon."

Do you wish to speak to the amendment?

Mr. Wildman: I think the arguments have been made.

Mr. Ballinger: I think Mr. Scott has certainly qualified the government position.

Mr. Chairman: Are you ready for the amendment then? Those in favour? Opposed?

Motion negatived.

Mr. Chairman: Should subsection 18(4) carry? Carried. Should subsection 18(5) carry? Carried.

I have a proposed amendment now from the New Democratic Party, which would insert two additional subsections, namely, subsections 18(6) and 18(7).

Mr. Wildman moves that section 18 of the bill be amended by adding thereto the following subsections:

"Reference to board

"(6) Upon the objection by any party to the transfer of the licence, the minister shall refer the matter to the board to determine if the transfer is appropriate and if the new licensee is capable of adhering to the requirements of the licence.

"(7) Subsection (6) does not apply if, in the opinion of the minister, the request is frivolous or vexatious."

Mr. Wildman: I think what we are suggesting is pretty straightforward, that if there is any objection, the minister should transfer the matter to the Ontario Municipal Board to determine if the transfer is appropriate and if the new licensee can in fact carry out the conditions on the licence.

But, having recognized that we are not here attempting to stop the operation of businesses where a new licensee can legitimately carry out the requirements and it seems obvious that he can, we want to give the minister the opportunity to avoid having unnecessary and silly objections going to the OMB; to give the minister the discretion, if in his opinion the person or persons who are objecting are just doing so to be vexatious or are not really sincere in their objections or do not really have good reason for the objections, to say: "All right, we're not going to go to the board on this. It is not a good reason."

Mr. Fleet: Can I just put a question about this? Perhaps either Mr. Wildman or the counsel who is available here could clarify whether my first impression of this amendment is correct. The act, as it is currently proposed, sets up the scheme whereby the board has a hearing and then makes a recommendation to the minister and the minister makes a decision.

As I read this, it seems to say that where there is an objection to the



transfer of a licence, the board will determine; in other words, the board makes the decision and the minister, in that scenario, would not have the decision. Am I reading that correctly?

Mr. Wildman: Yes, you are, as far as I am concerned.

Mr. Fleet: Well, that is Mr. Wildman's intention. That does clarify it. Can I then ask him why he would propose that in the first instance the minister gets to make the decision—unless I am wrong, you did not object to that in your comments—but if there is a transfer and then an objection, no longer does the minister have the wherewithal to make the decision?

Mr. Wildman: You heard at the beginning of the discussion of this section, section 18, our overall objection to the minister's discretion. Added to that is that we want, obviously, if there are objections, to give the people or groups that have objections the opportunity for a hearing. That is why we would want it to go to the board and have the board make a decision.

However, we recognize that that could be a problem, and that is why we have the other subsection. There could be people who just like hearings and want to have hearings on everything, whether there is good reason for a hearing or not. We want to give the minister the opportunity to determine if in fact someone is being vexatious, to avoid the expense and time to the proponent of the operation, the person who is trying to get the licence transfer, and to the people who need the aggregate and everybody concerned, the lawyers and everyone else, if it is in fact a frivolous objection.

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Mr. Ballinger: Again, I will defer to Mr. Scott to talk about the technicalities of the licence being on the site. The licence is not issued to the licensee; the licence goes with the actual site. I wonder, Mr. Scott, if you could just maybe explain it. We have some difficulty because the amendment speaks of the licensee. The act is put in place to control the actual location.

Mr. Scott: Yes. The licence is indeed for the operation itself; it is not for the operator per se. This act is designed to regulate the operation. It is the civil servant's responsibility to go out and ensure that the act is being adhered to on that particular property.

What we are trying to do is get information coming in at the time of transfer. If there are problems and it is another opportunity, there is the one-year review, there is the four-year review and there is the transfer situation, where we want to glean as much information as possible from the municipality and get that information into the decision-making process about what needs to be done on that property to make that property better. That is the intent of the way it was written.

Here the proposal is that we would be looking into the credibility, the viability and possibly the economic wherewithal of the new operator. That is not necessarily what this act is all about. We are not set up to look into the credibility and the viability of operators per se; we are there to ensure that the regulation of the property is in keeping with the act. That is where I see a conflict with the intent that we had in that particular section.

Mr. Wildman: There may in fact be a conflict with your intent because I do not agree with your intent, but the fact is that I agree that it is not within your realm of expertise to judge the economic wherewithal of a

person who has purchased a gravel pit and whether or not that individual or company can comply with the conditions on the licence. I agree that that is not within your expertise and that is why we are referring it to the board.

Mr. Chairman: Those in favour of the proposed amendment? Those opposed?

Motion negatived.

Mr. McLean: It looked like a tie to me.

Mr. Wildman: Tie goes to the runner.

Mr. Fleet: Only in baseball.

Mr. Chairman: We will have to leave section 18 open for now because of subsection 18(1a).

Section 19:

Mr. Chairman: Does subsection 19(1) carry? Carried.

Mr. Pollock: I would like clarification of the statement on that. Maybe Mr. Scott could clarify this. In the case of a situation where this pit was licensed, does the problem exist where there had been an operator on this pit for many, many years and he had left some scars on the landscape? Does the new or the present licensee have to rehabilitate that pit?

Mr. Scott: After a transfer?

Mr. Pollock: Yes, after the licence has run out.

Mr. Scott: Yes. Once you have taken over property—let's assume you took over a 50-acre property and maybe 20 of those acres were mined out before, so there is a hole in the ground, and there are maybe 30 acres still remaining to be mined. If you were then taking responsibility for that property, you would have to do all the requirements that are under the legislation on that total property.

Mr. Pollock: In other words, even though what money has been paid in might have run out, the licensee would still be obligated to rehabilitate the whole 50 acres.

Mr. Scott: That is right.

Mr. McLean: Supplementary to that, then if the new licensee, who had only been there for perhaps a year or less, rehabilitated it all, and there was, say, \$50,000 left over for rehabilitation purposes, that new licensee would get that \$50,000.

Mr. Scott: Yes, he would. The act is designed, just as I was saying earlier to Mr. Wildman's question, to basically run with the land. It is that hunk of land that we are really interested in, what is happening on the land. We are not really interested in whether it is you or me. We are most interested that the land will be rehabilitated. It will be operated in compliance with the act and any other legislation that may exist in Ontario,



such as different environmental legislation or whatever, to ensure it is operating properly.

Mr. Pollock: You are basically saying, though, that the present operator would have to pay for the sins of some other operator if he took over the whole property.

Mr. Scott: Yes. If he is making the commitment that he is going to assume that property, he should be making those kinds of arrangements when he acquires the land. He should not be paying as much, because he is assuming debt, in essence. Or he is assuming benefit if we take the other analogy. He would want to do an economic analysis in his own right when he makes that acquisition purchase.

Mr. Pollock: Okay.

Mr. Chairman: I called subsection 19(1) and it carried. Do you have a further question, Mr. Wildman?

Mr. Wildman: No.

Mr. Chairman: I now call subsection 19(2). Will it carry? Carried.

Section 19 agreed to.

Section 20:

Mr. Chairman: Shall subsections 20(1) and 20(2) and clause 20(3)(a) carry? Carried.

I have a proposed amendment by the government side that puts in a clause 20(3)(aa).

Mr. Ballinger moves that subsection 20(3) of the bill be amended by adding thereto the following clause:

"(aa) attaches a condition to a licence issued under subsection 69(3) that in effect adds, rescinds or varies a condition of the licence it replaces."

Mr. Ballinger: This concerns a replacement licence issued under the changeover from the Pits and Quarries Control Act. I wonder, Mr. Scott, if you could just qualify it, please.

Mr. Scott: This recognizes that at the time of changeover we have only three months to get the application from the operator into our hands, and we have a further three months after that to give him a new piece of paper that says "a licence for that property." It recognizes that in that time frame, if there are any appeals and other matters that have to be ironed out, there would probably not be adequate time to do it before we have to issue the new piece of paper.

We are recognizing that and basically making the licence with any conditions, terms or whatever are required at that time binding on him, even though he may still want to appeal at some time in the future. They will be binding from the date we put that order in place and he will have to comply from then on. Any appeal will be dealt with at a later date and any order that is found to be not appropriate will be rescinded afterwards. But during that

interim period, he will still have to follow the rules and regulations we have put on him that may be new or may be different than before.

1140

Mr. Wildman: This is a matter of interest in regard to the comments made earlier by the parliamentary assistant in relation to the amendment we put to section 18. I note that in this section we do in fact refer to "licensee."

Mr. Scott: I am sorry?

Mr. Wildman: We have a reference to a "licensee," whereas the parliamentary assistant said in response to the amendments I put to section 18 that there are no references to licensees.

Mr. Chairman: There is no reference to licensee in clause (aa).

Mr. Wildman: In section 20, we have a reference to "licensee" if you look at the end of subsection 4—well, we are on subsection 3, but in the next one, subsection 4, we are referring to a licence. In the discussion on clause 20(3)(aa), Mr. Scott has referred in essence to the licensee.

Mr. Scott: Yes. We put it in the personal there because the licensee has the right to appeal it per se, and I guess in terms of who has the right to appeal, I find it awkward to say the licence has the right to appeal.

Mr. Ballinger: The site appeal.

Mr. Wildman: I agree. That is why I think the objection to the previous one was an oxymoron.

Mr. Ballinger: I am very disappointed (inaudible) remember what I had to say. Even my kids do not listen that closely.

Mr. Chairman: Is there any further comment with respect to the government amendment?

Mr. Fleet: Can I just get some clarification about the words "in effect"?

Mr. Chairman: Who are you directing your question to?

Mr. Scott: To a legal adviser.

Mr. Fleet: What is the difference whether we take out the words "in effect" or whether we put them in? I guess that is a legal question. I am prepared to take an answer from anybody who wants to offer it. I would like to know what the difference is in whether you have those words in or out.

Mr. Yurkow: I am not sure there is any difference in taking them out. I did not draft this initially. I do not know why they were put in, but I do not see a problem in taking them out.

Interjections.

Mr. Searle: Mr. Fleet, is the question in clause (aa) the fact that—



Mr. Ballinger: We finally have three lawyers who are unanimous.

Mr. Fleet: I am inclined to say that they should come out, unless there is an intention on the part of the government to have—I guess unless you had the person here who drafted it, it is difficult to give a definitive answer, but if it is the intention of the government to only have this provision kick in when there is a substantive alteration, then maybe some other word ought to go in. Otherwise, I would be inclined to suggest that we ought to amend the amendment to take out the words "in effect," because all they would do is tend to mislead people.

Mr. Chairman: Are you making that motion?

Mr. Fleet: Yes.

Mr. Chairman: Mr. Fleet moves that the words "in effect" be deleted from the amendment.

Mr. Wildman: Agreed.

Mr. Ballinger: David likes to live dangerously anyway.

Mrs. Grier: Especially when it is exercised by a government member. It is unbelievable.

Mr. Chairman: If I am interpreting the subconversations correctly, it looks like there is an agreement that the amendment to the amendment carry. We are deleting "in effect"?

Motion agreed to.

Mr. Chairman: Is there any further discussion with respect to the amendment? Those in favour of the government amendment, then, as amended?

Motion agreed to.

Mr. Chairman: Shall clause 20(3)(b) carry? Carried. Shall clause 20(3)(c) carry? Carried.

Now we are up to the government amendment that inserts a—no, I guess I am one too early here.

The first thing we have to do is carry subsection 20(3), as amended. Carried. Now we are on subsection 20(4) and I think the NDP has a proposed amendment to clause 20(4)(a).

Mr. Wildman: No, our amendment deals with the whole of section 4.

Mr. Chairman: The whole of subsection 4?

Mr. Wildman: Yes.

Mrs. Grier: We will withdraw the section relating to the Niagara Escarpment if that would make life simpler.

Mr. Wildman: We have two amendments and we will withdraw the first one.

Mrs. Grier: We withdraw the first paragraph.

Mr. Wildman: They both dealt with the whole of the section. They do not deal with one of the (a), (b) or (c) items.

Mr. Chairman: You are talking about this up here?

Mrs. Grier: It is a deletion on page 19.

Mr. Chairman: It is on page 19.

Mrs. Grier: In the concluding paragraph of the clause.

Mr. Chairman: The first thing we should do here is take clause 20(4)(a) as carried. Carried. Clause (b)? Carried. Clause (c)? Carried.

Mr. Chairman: We will now entertain the government amendment to add clause 20(4)(d).

Mr. Ballinger moves that subsection 20(4) of the bill be amended by inserting,

"(d) proposes to consent to the transfer of a licence."

Motion agreed to.

Mr. Chairman: Shall clause 20(4)(d) carry? Carried.

Mr. Wildman moves that subsection 20(4) be amended by striking out in the eighth, ninth and tenth lines "and where, in the opinion of the minister, the matter is of importance and it is appropriate to do so."

Mr. Wildman: The purpose of the amendment is to require that the minister serve notice on the regional municipality or local municipality if the minister is doing clause (a), (b), (c) or (d), and not leave it to the minister to decide if it is important. Surely, I would think, most of what the minister does is important; certainly not frivolous.

The purpose of the amendment is clear, to require the minister to give notice to the municipalities in the case of him either proposing a new condition or amending a site plan, approving a site plan or transferring a licence.

Mr. Ballinger: Again, I will defer to Mr. Scott, but I know in the discussion we have had as it relates to this there was some concern about some discretion for minor changes. Really, that was the intent of that particular area, but Mr. Scott may want to be more specific.

Mr. Scott: This is basically a concern of ours where it relates to very minor changes such as a name change. We have companies that are changing their name all the time. We go through literally—over a period of a couple of years, we have done hundreds of these. There would be other minor things such as maybe a change in the fence or a change in the gate, many different things of that nature for which we feel we cannot have the requirement that we go back to the municipality on every occasion.

It would basically bog us down, and they would be impacted to a degree also; it is not just us. We would be impacting each other with all these minor



aspects they are not really that interested in. It is basically a housekeeping type of thing where we are just keeping the books and records up to date and modifying a few minor things. We do not want to require that for all those types of things, and that is what that amendment would in effect cause us to do.

Mrs. Grier: The rationale given by Mr. Scott indicates to me that it is even more important that the municipality be advised. We are not suggesting the municipality necessarily has a cause of action as a result of being advised. They can, if they object, appeal, but it is unlikely if the information that is being given to them is of such minor consequence as that suggested by Mr. Scott. But the municipality has some responsibility for enforcing its own bylaws and enforcing the licence and the rehabilitation.

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All of us who have dealt with municipalities know how easy it is, if the name of a company is changed, for the notice of violation of a zoning bylaw or a property standards bylaw to somehow be invalid. It would seem to me imperative that the municipality be advised of changes. That is what is being suggested by our amendment, not that the minister may or may not decide whether it is a change of consequence, and only in the case that he considers it important to advise the municipality.

Mr. Scott: There is one more point I should make. That would activate the 30-day waiting period clause and the requirement for comments, and the other sections that pertain to the minister making decisions. It is all interrelated, and that would be the part that would basically bog us down in a bureaucratic process. I guess I did not go far enough with my explanation there.

Mrs. Grier: Then surely it is possible to overcome my concern. Is there any other section that indicates a municipality is advised of a change in licence?

Mr. Scott: We have been doing this all along. We contact them and advise them of what is going on. Then when the action is actually taken, we send them a copy. By this section, we are actually taking the full effect of the act back through every time. If a company changes its name from Telephone City Gravel to TCG Materials—it is the same company, the same people running it and everything but it just makes a corporate change—we would be activating all these clauses in the act.

Mrs. Grier: That was not the intent of what we were trying to achieve. If you can assure me that—

Mr. Scott: We do have a process. It is part of our Manual of Administration for the existing legislation, and it will be beefed up even more for the new act. We do this as a matter of course with everything we are doing, and we do not feel it needs to be specified in the act, because it is part of our normal government process.

Mrs. Grier: Okay.

Mr. Chairman: Do you wish to withdraw the amendment?

Mr. Wildman: Yes, we will withdraw it.

Mr. Scott: I am sorry I did not explain it in enough detail to start with to make it clear.

Mr. Chairman: Shall subsection 20(4) in its entirety, as amended, carry?

Carried.

Subsection 20(5) has an amendment of a housekeeping nature.

Mr. Ballinger moves that subsection 20(5) of the bill be amended by inserting after "(a)" in the second line "(aa)."

Motion agreed to.

Shall subsection 20(5), as amended, carry?

Carried.

Subsections 6, 7 and 8?

Carried.

Section 20, as amended, agreed to.

Mr. Fleet: I suggest we go on to subsection 18(1a).

Section 18:

Mr. Chairman: Now we have to tidy up by going back to 18(1a).

Mr. Fleet: I thought somebody had already moved this one.

Mr. Chairman: We did. I have it on the record. We just stood it down.

Clerk of the Committee: Mr. Wildman has proposed a subamendment to remove all the words after the word "elapsed."

Mr. Chairman: Right. Are you going to make the subamendment to the amendment at this point?

Mr. Wildman: Yes.

Mr. Chairman: Mr. Wildman moves that the amendment be further amended by striking out all the words after the word "elapsed" in subsection 18(1a).

Mr. Wildman: Let me start off by saying that, overall, we like the amendment. We think it is a good one, but we are concerned about that last phrase, "or comments have been received, whichever occurs first." We would prefer the 30 days to be the time limit. I think it is hard for the minister to know when all the comments have been received. Let's say that 15 days after he received comments from all the groups he anticipated would be interested and says: "All right, we've got all the comments. Now we can deal with this. We can take action," and there is someone or some group he did not anticipate that is not aware of it in time and does not get the comments in. If we leave



it at 30 days then everyone has 30 days. If they do not make it within 30 days, it is their tough luck.

Mr. Fleet: Can I ask a question? As I understood your comments, you are talking about other individuals getting notice, and as I understand the amendment, it talks about a municipality served with notice.

Mr. Wildman: Sorry. If I said groups, I should have said municipalities.

Mr. Fleet: Let's say there are two municipalities involved, for the sake of argument: As I understand the government amendment, if the minister gets the comments from both municipalities in five, 10 or 15 days, whatever the case may be, you are saying the minister has to wait even though he has had the comments from everybody he has served with the notice.

Mr. Wildman: Is it conceivable that another municipality he did not serve with notice might have some comments? Does he not have to then consider them or should he not consider them?

Mr. Fleet: No. This provision, as I understand it, kicks in with respect to notice to municipalities and government response. The minister might want to wait forever, waiting for other comments from people other than the municipalities. That is up to him to decide what he wants to do.

Mr. Wildman: Well, no. If this phrase stands, it says, "whichever occurs first," so he cannot wait forever.

Mr. Fleet: No. It says he cannot take any action "until after 30 days have elapsed or comments have been received." That is the government proposal—

Mr. Wildman: Whichever comes first.

Mr. Fleet: —whichever would occur first. But my point is that if the minister wants to wait for comments from entities other than the municipalities to which he served notice, whether you put this in or not, he can wait forever if he likes. All the government provision does, as I understand it, is say that when he serves the municipalities with notice the minister cannot act for 30 days until he gets their responses. In other words, municipalities have 30 days to get their act together and get something in. If they get their act together and get something in sooner, the minister is not handcuffed; he can act on what they say.

Mr. Wildman: Okay.

Mr. Fleet: For all I know, the municipalities might make comments to say, "Move immediately," and the act would then prevent him from doing just that.

Mr. Wildman: I do not like to sound as if I am reaching, but perhaps I am. Is it conceivable that if the minister gives notice to a municipality or two municipalities, the municipal council meets, looks at it, directs the clerk to provide comment within 10 days, then subsequent to that a delegation goes to the municipal council with objections that the municipal councillors did not anticipate?

Mr. Fleet: This is a long reach.

Mr. Wildman: If the minister has concluded that he has received all comments and has proceeded to act, that would preclude the municipality from giving additional comments.

Mr. Chairman: Have you got anything to say about this, Mr. Ballinger?

Mr. Ballinger: We have no further comment. We agree with Bud. We think it is a good amendment and we think all sides are covered. We think it is fair and equitable.

Mr. Chairman: Are you talking in favour of the amendment?

Mr. Ballinger: No. Our amendment, not Bud's amendment to the amendment. Sorry.

Mr. Chairman: Are we ready for the amendment to the amendment?

Those in favour? Opposed?

Motion negatived.

Mr. McLean: It is another tie.

Mr. Chairman: Put up your hand, will you, Mr. Ruprecht?

Mr. Ruprecht: I did not know this was the grapefruit league here.

Mr. Chairman: We are. We have been watching like hawks.

Mr. Ruprecht: I was simply told by my colleague at the appropriate time to raise my hand.

Mr. Chairman: That is right. I just told you to. Is there any further comment on the amendment? Those in favour of the amendment on subsection 18(1a)? Opposed?

Motion agreed to.

Section 18, as amended, agreed to.

Mr. Chairman: I think this would be an excellent point at which to break for lunch. We will adjourn until 2 o'clock this afternoon and we will begin with section 21.

The committee adjourned at 12 p.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT  
AGGREGATE RESOURCES ACT  
TUESDAY, APRIL 18, 1989  
Afternoon Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

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Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden

Pollock, Jim (Hastings-Peterborough PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

Searle, D. G., Solicitor, Legal Services Branch

Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section

Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, April 18, 1989

The committee resumed at 2:11 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Section 21:

Mr. Chairman: The chair recognizes a quorum. We dealt with section 20 this morning, so we will pick up at section 21. Will subsection 21(1) carry?

Carried.

Subsection 21(2)?

Carried.

I have a notice of an amendment by the New Democratic Party for subsections 21(3), (4) and (5).

Mrs. Grier moves that subsections 21(3), (4) and (5) be struck out and the following substituted therefor:

"Board decision

"(3) The board shall, at the conclusion of a hearing under this section, make a report to the minister setting out its findings and its decision as to the issue involved and shall send a copy of its report to each party to the hearing.

"Notice

"(4) The minister shall serve notice of the board's decision and the reasons therefor upon the parties to the hearing and upon any municipality served under subsection 11(1) or subsection 20(4), as the case may be.

"Appeal

"(5) Any party to the hearing before the board may appeal the decision of the board to the minister within 30 days after the date of the board's decision.

"Idem

"(6) If a party appeals under subsection (5), the minister shall inform the other parties to the hearing of the appeal and shall request submissions regarding the appeal.

"Idem



"(7) On an appeal under subsection (5), the minister shall decide the appeal and shall provide, in writing, reasons for the decision.

"Idem

"(8) The decision of the minister is final except if a party to the hearing appeals the decision to the Divisional Court on a matter of law."

Mrs. Grier: The intent is to provide an appeal mechanism from the hearing of the board to the minister, with a decision being made under such criteria and by serving notice as outlined in this amendment; and providing that the minister's decision is final unless appealed and a direction under what conditions an appeal may be made, only under a matter of law.

Mr. Ballinger: We do not support the amendment. I guess the difficulty in this process is that the bill in itself is so complex, and at this stage we really have to rely heavily on Mr. Scott and the legal staff to bring forth their concerns as they relate to the proposed amendment. Dale, would you mind?

Mr. Scott: This is a complex area, as Mr. Ballinger was saying. We do have some concerns with this process because it creates an appeal mechanism that seems to allow for it to drag on for a fair length of time.

Our legal adviser has also indicated a couple of concerns that I think we should be aware of. What is being suggested is that the board would be making the decision and then, afterwards, it indicates that the appeal is to the minister. That is a problem in the sense that the minister is a party to the original decision, because if the board is making the decision, we would have to be a party at any hearing. By having that all intertwined like that and then having the minister, having been a party to the hearing, be the person to whom there is any appeal, seems to make it more complex and convoluted than would be advisable, based on our reading of it.

We also have the concern that in this particular act, there is a considerable amount of regulatory involvement required. If the board is making the original decision, it would also be making the original conditions. Whatever comes out of the board, in essence, would be largely created by it and bound on everybody by it.

The details of the various conditions we have experienced in the past that are recommended to our minister under the Pits and Quarries Control Act are such that when we receive them, we normally go through them in great detail and we usually supplement them. We usually expound on what is said on a condition-by-condition basis, but we also add extra conditions that go further and make better operating environments and operating rules for the individual property that is being licensed.

That is one of the key essences of why we preferred and recommended in this legislation that the minister get a report from the board with a recommendation and that the minister actually make the decision. We have looked at some of the ones we have done in the past with that same format, such as the Mono-Mulmur case which Mr. Ballinger has talked about a couple of times.

Mr. Ballinger: Do not hang your hat on that one, though, Mrs. Grier.

Mrs. Grier: That is the good-case scenario.

Mr. Scott: That is, but with 100 to 150 different Ontario Municipal Board hearings we have gone through in the last few years, we have had the opportunity—We have, in the last couple of hours, looked into it. We have been able to come up with some statistics that indicate that on the vast majority of properties that go through an OMB hearing, we actually supplement, to a fair degree, the various conditions and the rules. We have even cut back the area. The board has said, "You should license this area," and in some cases we have cut back the area with greater setbacks or actually with the boundary being changed. We have also put extra conditions on licences beyond what the board was recommending.

Taro Aggregates down in Hamilton is a prime example. Cornwall Gravel Co. over in the Cornwall area is another example in the last two and a half or three years where this type of approach has worked very favourably and we have been able to come up with what we thought was a much better operation than what we would have gotten solely from the OMB or from any board. They, generally speaking, do not have the opportunity to have worked in this particular field where they see how you can actually supplement or make better by putting extra conditions on, or better conditions: we have found in the past that the wording may not have worked in some cases. But in this particular circumstance, by putting a few extra words in, it makes it stronger.

That is basically where our concern lies.

Mrs. Grier: I have some difficulty. You say, in response to our amendment, that it is inappropriate that the appeal be made to the minister because the minister is in effect a party to the hearing before the board. But as I understand the act as it is now drafted, the board makes a recommendation to the minister and the minister makes the decision.

Our position is that the board should make the decision which could be appealed to the minister. I think that is putting the minister one step further removed from a conflict than the existing drafting, which has the minister, in fact, being both a party to the hearing and then making a decision on the basis of that hearing.

Mr. Scott: I am referring to your proposed amendment, subsection 21(3), where it indicates "and its decision." I am referring to that as being the board's decision.

1420

Mrs. Grier: Right.

Mr. Scott: Then go down to subsection 5, "Any party to the hearing before the board may appeal."

Mrs. Grier: The board makes a decision which can be appealed to the minister, as opposed to the existing situation where the board makes a recommendation and the decision is made by the minister. Your argument in opposition to our amendment was that that would place the minister in an invidious position because he was both a party to the board and the appeal.

Mr. Scott: That is right.

Mrs. Grier: I am saying that it is less invidious than the position he is now in, which is that he is a party to the hearing and makes a decision on the issue.



Mr. Scott: No. Under our present system, we are not a party to the hearing. Under the proposed new Aggregate Resources Act as written, we would not be a party taking a stance on it. We would be an impartial party, and the board would make the recommendation to the minister, who would then, in his wisdom, be making the decision based on the best information he had, which would be an impartial report from the board to him.

Mrs. Grier: So you would give evidence to the board without—

Mr. Scott: Normally we do not give evidence to the board. Only on planning matters do we normally get involved with the board in giving evidence from a ministry standpoint. Some of our employees may be subpoenaed by one side or the other, but that could happen in any circumstance. If they are subpoenaed, they are there in their own professional or technical capacity; they are not there representing the ministry.

Mrs. Grier: I see. I did not understand that.

Mr. Scott: We have looked at this very carefully. It has not been just your amendment that has made us look at this one. When we originally drafted this and more recently, a month or so ago, we sat down and did the pros and cons of both ways, and we came out looking at it, we thought, very objectively.

We still believe the best way is for the minister to have that impartial report coming and the Ministry of Natural Resources not being a full party to the board. If the board is making the final decision, we would be a party there with the same powers as any other party, whereas at the present time, we do not have that standing. Basically, we have a standing, as I interpret it—as we have implemented it over the last number of years, anyway—that we would take no stance, no position at the board, and we would wait for the board, based on the best information it has, to make a recommendation to the minister. Then, after that, we have made recommendations to supplement what the board has said. That is where my earlier answer came in.

Mrs. Grier: The Environmental Protection Act has been amended to give the Environmental Assessment Board the power to make decisions before it makes recommendations.

Mr. Scott: Yes.

Mrs. Grier: How would your position vis-à-vis this differ from the position the Ministry of the Environment is now in before the Environmental Assessment Board?

Mr. Scott: Ours is a little different. Our minister would still have the right to supplement the conditions the board was recommending, whereas with the Environmental Protection Act, whatever conditions it puts down are final. If someone thinks of something to make it better afterwards, that is nice, but they are not going to be able to integrate it into the system, as our system will be able to do.

That is why I referred to a couple of these properties. I could name others. There are TCG Materials and Premier Concrete property up at Erin that were dealt with a few years ago. There is the Preston Sand and Gravel property over at Kitchener that I am aware of. There are probably dozens more, and I am sure there are, because on virtually every one that comes down from the Ontario Municipal Board, we add a few other things to the conditions beyond

what it refers to so that we can round it out and make it more applicable from a regulatory standpoint and have more teeth in it.

Mrs. Grier: It is a question, then, of judgement as to where you are likely, if you want to protect the environment, to get the stronger recommendations. But is there not, from a process point of view, an advantage in having all the pros and cons thrashed out in an open forum, such as a hearing before the board, where the most stringent conditions possible to a licence can be at least canvassed and debated among the parties as opposed to having that added to a licence application by the minister but without any opportunity for public review, participation or even perhaps knowledge that these recommendations are going to be made?

Mr. Scott: I understand what you are saying. It makes sense. However, when you put it into actual application and practice with a fairly complex piece of legislation like this—and we had this problem with the Pits and Quarries Control Act, which was not nearly as complex as this—we feel that we need the opportunity to put this type of detail to work. We can prove to you that in the cases I am talking about and in any other cases I can dig out of the files that we have not made the conditions less onerous. They have always been more onerous than those of the OMB—or any hearing board; it does not really matter what board it would be—because our understanding of how to make it implementable, how to make it binding and how to make it so that we have a legal method that is going to stand up is probably better, because we are doing it every day of the week.

We recognize the type of things we have run up against and the type of problems, and we are able to look at the new application and transmit that same information into that. The people still get their day in court through the OMB process. The only difference is that we feel that through this method we are allowing our staff to recommend to the minister extra things that are going to make it even better.

One of the other methods that we think is going to be better with this is that by not having our staff tied up in all these hearings—If it is the board's decision, our staff are going to be sitting there; they are going to be tied up, basically not doing their jobs out in the field. They are going to be sitting in hearings, because we do quite a large number of these a year. I tend to think a secondary benefit is that we will have our staff doing the jobs they are hired to do rather than sitting in hearings all the time. At present, we can divorce ourselves from the hearing and not be a party to the hearing, and therefore we are not consuming our staff's time in that manner.

Mr. Ballinger: I am sure glad we got that on the record, Mr. Scott, because I will be reminding you.

Mr. Wildman: We have consumed a great deal of Mr. Scott's time today and yesterday.

Mr. Ballinger: It is for a good cause. It is afterwards that I am concerned about.

Mr. Wildman: I consider it part of his job.

Mr. Fleet: I do not want to repeat some of the information that was covered, but my reading of the proposed amendments led me to some problems with the drift of what is in there. I have some difficulty, quite frankly, with the grafting on of a new idea to the current act. Among other things, it



seemed to me that this proposal would have the effect of diffusing the ministerial responsibility for the decision and really confusing some of the differences between a quasi-judicial function that an administrative tribunal carries out and a hearing level that is making a recommendation.

One of the reasons I say this is that the proposed subsection 6 talks about requesting further submissions. You do not really know whether the minister is going through a kind of rehearing without having people physically present or what that means. It just seems to me to be a lot cleaner as a system if you have a board that makes a recommendation. That is a clear process. With this proposal, even though it says it is an appeal, the minister, as I understand it, would not even be acting in an appellate function. He would be kind of doing it all over again, or potentially doing that.

I would have a lot of difficulties with this proposal, quite apart from the lengthy comments about the function of staff that were provided by Mr. Scott.

Mrs. Grier: Let me just respond to that. I think this proposal at least lays out clearly that there will in fact be submissions and from whom they can be solicited.

I have a very direct interest in my own particular riding, where the Environmental Assessment Advisory Committee made a recommendation to the minister five months ago with respect to a request for an environmental assessment designation. The minister has made no decision, but it is fairly common knowledge that some of the interested parties to the question have been making submissions and discussing it in private with ministry staff.

I would much rather have an open, upfront process where everybody knew that your chance to get your oar in was at a hearing. That is your opportunity, and what you say will be subject to cross-examination and discussion by experts from the ministry, as well as all parties to the hearing. I think there is a real argument to be made that our amendments are in line as open and more democratic processes than those suggested by the government.

1430

Mr. Fleet: If I can ask a question, I understood we had already approved of the provisions that dealt with Ontario Municipal Board Act procedures. Are you suggesting those are not democratic? That is already in the act.

Mrs. Grier: But under this particular act the board makes a recommendation to the minister, and the minister then takes whatever counsel happens to be available or he chooses to solicit and makes the decision. Our amendment is that all of that will be laid on the table and the board will make the decision.

Mr. Fleet: You do not solve that problem at all. You have right in your own proposal that going to the level of appeal to the minister, he "shall" request submissions. All you are doing is continuing the very problem you are saying you are trying to resolve. That is why I say that from what I guess you would say is a technical point of view, I have some problems with this. I do not think it really accomplishes all you say you want to do. I

think it is at least as confusing as anything you are complaining about. That is my opinion. I respect a difference of view on it.

Mrs. Grier: You are making the assumption that every decision would be appealed and I do not agree necessarily that if all aspects were canvassed at a board hearing there would necessarily be an appeal.

Mr. Chairman: Is there further discussion? I am going to call the vote then on the amendment to subsections 21(3), (4) and (5).

Those in favour?

Those opposed?

Motion negatived.

Mr. Chairman: Shall subsections 21(3), (4) and (5) carry? Carried.

Mr. McLean: Could I have clarification on subsection 21(5)? "The decision of the minister is final." Does that indicate the applicant could not then apply to the Ontario Municipal Board?

Mr. Ballinger: That is the final decision after the process, yes.

Mr. Fleet: There would be a capacity, I think, to have somebody who was challenging on a jurisdictional ground still go to court. By saying it is final, it does two things: It tells you that there is no appeal internally but that there is a jurisdictional appeal to the Supreme Court of Ontario.

Mr. Chairman: We have carried all subsections of section 21 now. Will section 21, in its entirety, carry?

Section 21 agreed to.

Section 22 agreed to.

Section 23:

Mr. Chairman: We are beginning part III now, entitled "Wayside Permits." We have a notice of an amendment by the government side on subsections 23(1), (2), (3) and (4).

Mr. Ballinger: I beg the indulgence of the committee. This morning we tabled, as well, additional amendments under section 23, and I wonder if we could—

Clerk of the Committee: Which one are you going to go through?

Mr. Ballinger: As well, we tabled clauses (c) and (d) this morning as further amendments to section 23.

Mr. McLean: You never give up, do you?

Mr. Ballinger: I want to beg the indulgence of the committee and apologize for the, somewhat, confusion, but we are convinced as a government that it is in the best interests of all parties.

In the discussion that relates to this, as you know, the wayside pit



issue has been of major concern to, more specifically, the groups that appeared before us, the Caledon Ratepayers' Association as well as one of our own members who represents that area, Mavis Wilson. We have had many discussions to try and put together a clear direction as it relates to this, section 23, and it has become very difficult.

We believe that what we have now with this proposed amendment as amended, or this proposed amendment of the amendment, in those clauses (a), (b), (c) and (d) is a clear direction of where we are going as it relates to wayside pits. It includes the proposal of the Caledon Ratepayers' Association and the definition of "temporary" as well, I think, more clearly and succinctly. When someone reads section 23, he will know exactly that wayside pits are to be of a temporary nature and are to be used in the public good, for specific projects or else for road projects.

I think by virtue of our amendments here today, most people in Ontario who are somewhat opposed to wayside pits will be fairly supportive of what we have done as a government, also recognizing that wayside pits are important to the day-to-day road construction process in Ontario.

Mrs. Grier: I would concur with the parliamentary assistant that some distance has been travelled towards control of wayside pits, but I regret the government did not see fit to define a wayside pit in its definitions. I know it is in this section. I finally got hold of the Pits and Quarries Control Act and I see there is a definition of "wayside pit" in it. I am wondering whether you considered that and rejected it, and if not, whether you would be prepared, if we did not make any cracks about even more last-minute amendments, to bring one in tomorrow that would include that.

Mr. Ballinger: I want to say to you, with the greatest of respect, that this section has probably been flogged and reflogged more than any other section of this entire bill. As far as the definition is concerned, maybe again because of the technical difficulties here—obviously, Mr. Scott, you are the technician here. In your role, maybe you could outline for Mrs. Grier the question as it relates to why it is not included in the definitions.

Mr. Fleet: Can I raise a point of order? I have a suspicion that not all members have a copy of the latest proposed amendment.

Mr. McLean: I am trying to find mine; I cannot. I have so many amendments here, I am not quite sure which one—

Mr. Chairman: I suggest we get a comment on wayside pit definition and then we are going to have to get a motion on the floor to talk about.

Mr. Fleet: Nothing has been moved.

Mr. Chairman: Nothing has been moved.

Mr. Ballinger: Just for clarification, in the original ones we tabled with you yesterday there is a subsection, 23(3). What we have done is take the original amendment you received in the 42 amendments.

Mr. Wildman: That is on page 20?

Mr. Ballinger: On page 21.

Mrs. Grier: Of the bill.

Mr. Ballinger: We have included clauses (c) and (d), to be added to clauses (a) and (b).

Mr. McLean: Oh, I have not seen that resolution.

Mr. Ballinger: It was, I thought, tabled this morning. Was it not tabled this morning?

Mr. Chairman: Mr. McLean, did you get a supplementary list of amendments?

Mr. McLean: I have that, but that is not what he said.

Mr. Wildman: We have that, but what he is saying is—

Mr. Fleet: There is yet another one, I think.

Mr. Wildman: —they have taken clauses (c) and (d) out of subsection 23(3) and they want to insert—

Mr. Ballinger: Then I do offer my apologies. I am sorry. I thought they were tabled this morning. Obviously, I have my copies. It appears that I am—

Mr. McLean: —trying to railroad it through.

Mr. Ballinger: No, not by any stretch of the imagination.

Mr. Fleet: He is just trying to browbeat you, Bud.

Mr. Wildman: I have what you tabled yesterday.

Mr. Ballinger: Let me just explain. One of the problems we got into when we did this was that in our haste to try to get the amendments before everyone, we unfortunately did not do a very good job of getting this approved by legal counsel. So what we have done, now that it has been looked at, is we believe the original amendment that was tabled on second reading plus this amendment to the amendment more clearly define the temporary nature of wayside pits and will in fact give a more specific understanding for those people who read the act and want to know exactly what a wayside pit and its purposes are.

Mr. Chairman: I think this is a very good preamble, but I still think you should move the amendment with all the parts to it so we know what we are talking about.

Mr. Ballinger: Okay. Again, I apologize and I beg everyone's forgiveness.

Mrs. Grier: Could we clarify one thing then?

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Mr. Wildman: On a point of order, Mr. Chairman: As I understand it just for clarification here, what is being suggested by the parliamentary assistant is that if you take these two documents—he wants to take clauses



23(3)(a) and (b), which are in this document, and he wants to add clauses (c) and (d) from this document.

Mr. Ballinger: Yes.

Mrs. Grier: So what happened to (a) and (b)?

Mr. Wildman: I want to know why we are backing off (a) and (b) in this document.

Mr. Ballinger: Again, it related strictly to my understanding and Mr. Scott can speak to it. I am not the technician. But in our haste to get these amendments before you, we had not sought legal counsel as it relates in the proposed amendments, clauses (a), (b), (c) and (d). The original amendment with the inclusion of (c) and (d) make that whole issue of wayside pits more enforceable and more easily understood. Having said that, Mr. Scott, before I muddy the waters, do you want to jump in? That is my understanding in this whole discussion.

Mrs. Grier: Let me just add a final question: I assume the intent of the original (a), (b), (c) and (d) is included elsewhere. If so, can you point me to the section that now includes "adequate provision can be made as terms and conditions of the permit to ensure a method of operation and adequate rehabilitation"? I cannot find that in the revised (a), (b), (c) or (d)?

Mr. Chairman: I would like to exercise my prerogative as chairman. If I do not get an amendment, I am not going to talk about this.

Mr. Ballinger: I apologize, Mr. Chairman. I will do that now so it is properly before the committee.

Mr. Chairman: I would like you to read into the record what you are proposing.

Mr. Ballinger: Thank you. Again, I cannot apologize enough for the confusion. It was not intentional. We are trying to resolve this particular issue in the best interests of all concerned.

Mr. Chairman: Mr. Ballinger moves that subsections 23(1), (2), (3) and (4) of the bill be struck out and the following substituted therefor:

"Application for wayside permit

"(1) Any public authority, or any person who has a contract with a public authority, that requires aggregate for a temporary project from a source in a part of Ontario designated under section 5 that is not under licence or permit may apply to the minister, on a form provided by the minister, for a wayside permit to operate a pit or quarry.

"Licence not required

"(2) Subsection 7(1) does not apply to a person who has a wayside permit.

"Limitation

"(3) An application under subsection (1) shall not be considered unless, in the minister's opinion,

"(a) the aggregate is required, for a project of road construction or road maintenance, from outside the limits of the right of way of the highway; or

"(b) the aggregate is required for an urgent project for which no alternative source of aggregate under licence or permit is readily available in the vicinity,

"(c) the aggregate is necessary for the purposes of a contract or project; and,

"(d) adequate provision can be made as conditions of the permit to ensure a method of operation and rehabilitation so as to cause only a temporary inconvenience to the public."

Do you wish to add any comment further to the one you have already made?

Mr. Ballinger: Not at all.

Mr. McLean: What does subsection 7(1) mean?

Mr. Chairman: I am going to recognize the legislative counsel for a moment. He has a question or a comment.

Mr. Yurkow: Without speaking to the substance or the intent, the drafting is just unclear or bad. You cannot have the disjunctive "or" and the conjunctive "and" because it is not clear whether it is (a) or (b), (c) and (d). Is it (a) or (b) and (c) and (d)? It just does not --

Mr. Ballinger: I learned at university it is all of the above. I am just kidding, of course. I just thought if Mr. Wildman could get away with that, I could.

Mr. Fleet: I would think the word "or" is the one that should be appearing.

Mr. Ballinger: I have to, obviously, go to counsel here because I am not the architect.

Mr. Fleet: It should be (a) or (b) or (c) or (d).

Mr. McLean: What is it?

Mrs. Grier: You need an "or" at the end of (b) and (c)?

Mr. Fleet: No, you just need to move one "or."

Mr. Chairman: What is the intent here?

Mr. Wildman: If you move one oar, you go around in a circle.

Mr. Fleet: The Mining Act does not apply to this one.

Interjection: It depends if you are mining or not.

Interjections.



Mrs. Grier: You cannot have a wayside pit under water, exclusive of subsection 7(1).

Mr. Ballinger: Do we want some time to review this? If you would not mind, Mr. Chairman, let us stand it down so they have an opportunity to qualify that on behalf of all concerned.

Mrs. Grier: I think they know what they are doing.

Mr. Ballinger: It is a very important section of the bill.

Mr. McLean: Does Mr. Scott fully understand it?

Mr. Sola: Ian does.

Mr. McLean: If he does, perhaps he could give us his opinion.

Mr. Ballinger: Can we stand that down until the end of the day?

Mr. Chairman: Does it have to be stood down? Do you need some time?

Mr. Wildman: Are we standing it down on the basis of the "and" and "or" question?

Mr. Scott: It is basically the "and" or "or". Mr. Ballinger has indicated that these were modifications---what we thought were improvements on how it was drafted before and we did not have the luxury of going to the legislative counsel before this last page was put in, so there is a concern about the "and" and "or".

It was our intent that the "or" would pertain between the (a) and (b) and the "and" would pertain between the (c) and (d). That is where we were standing on it. The first two aspects are an "or," because it would be one or the other, you would not have both under normal circumstances, and the other ones, the (c) and (d), are both "ands".

Mr. Yurkow: What goes between (a) and (b) and then (c) and (d)?

Mr. Scott: It might be---

Mr. Fleet: Would I be correct to say that you want to get (c) in for sure, you have to have (d) in for sure, and you have to have one of (a) and (b)? Is that correct?

Mr. Scott: Yes.

Mr. Fleet: So we may want to reorder these?

Mr. Scott: They should be, yes.

Mr. Fleet: It would have more sense to have them in a different order.

Mr. Scott: It may be in a different subsection even.

Mr. Wildman: That is just what I was thinking. It might be a good idea to have a different subsection.

Mr. Scott: We were not aware that you could not have an "or" and an "and" in the same section.

Mr. Ballinger: Don't open that can of worms, for crying out loud. He will be throwing his shoe at you.

Mr. Scott: I think I have already got hit.

Mr. Ballinger: Mr. Chairman, can we stand that down until the end today and bring that back in, or are you satisfied that you can—

Mr. Scott: We know what we want. We just do not know how the legislative counsel wants us to correct it.

Mr. Yurkow: From what you say, if you combine the (a) and the (b) in one clause with the "or" between them, then (c) becomes (b) and (d) becomes (c) and you leave the "and" between the (c) and the (d).

Mr. Ballinger: Is that okay?

Mr. Scott: That is basically what we are looking for and we appreciate your direction.

Mr. Fleet: Might I suggest to legislative counsel, would it be helpful if we made the (a) and (b) into (a)(i) and (a)(ii)? Otherwise, that is going to be tough for somebody to understand.

Mr. Yurkow: That would work as well, yes.

Mr. Fleet: That would be more helpful, I think. So we will turn (a) and (b) into (a)(i) and (a)(ii), and then you add the word "and," and then (c) becomes (b) and (d) becomes (c).

Mr. Ballinger: Is that okay, Bud?

Mr. Wildman: Don't look at me.

Mrs. Grier: Let's just be clear. I need to be clear under what conditions an application will be considered. It is if it is for a project of road construction or an urgent project for which no alternative source is available, and in all cases, if the aggregate is necessary for the purposes and if adequate provision can be made for rehabilitation. Is that correct?

Mr. Scott: That is correct. That is our intent and I think the clarification makes it much more understandable.

Mr. Wildman: Okay. Now I understand it. Now I have to decide whether I agree with it.

Mr. Ballinger: Then you should have participated in the debate on this side of the House, let me tell you.

Mr. Wildman: What are we doing with this, Mr. Chairman? Are we dealing with it now?

Mr. Ballinger: We are prepared now.



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Mr. Chairman: We will deal with it now, if everybody is content with the lettering. I will review that before we vote.

Mr. Wildman: Okay. I would like to refer for a moment to the now-defunct draft of the amendments that we got yesterday.

Mr. Ballinger: A lot of things happened since six o'clock yesterday.

Mr. Wildman: I must admit that when we studied these proposed amendments, we very much liked clauses 23(3)(a) and (b) in this amendment; but the government has in fact moved a long way.

Mr. Scott: Those are now (b) and (c) by the new lettering.

Mr. Wildman: We like those because they are very similar to the amendments that we have tabled for subsection 27(3).

Mr. Scott: Yes. They were part of the submission from the interest groups and we, under the direction of Mr. Ballinger and our minister, looked at it carefully and tried to address those issues.

Mrs. Grier: Could I just ask if they intend to move the same amendments when we get to section 27? In your words, is the intent the same?

Mr. Scott: We looked at sections 23 and 27, and at the time we were reviewing this, we felt that the concerns that were addressed—and they are basically the same words we are talking about—fit better into the circumstance of section 23 than of section 27. Even though the interest groups that came before your committee had addressed section 27, we felt that they were addressing them in the wrong area.

Mrs. Grier: But the conditions that are being included in section 23 will apply in the case of permits issued under section 27. Is that correct?

Mr. Scott: Yes. They would be carried through because they are part of the act. So the same concerns would be addressed; it is just that they are itemized earlier.

Mr. Wildman: That is fine. We can live with that.

Mr. Ballinger: I am sorry for the confusion, but of all the issues of great debate, this one is—

Mrs. Grier: You ain't seen nothin' yet.

Mr. Ballinger: I will say no more.

Mr. Chairman: Is there any further comment? I would like to read into the record what I would interpret all of the discussion concerning numbering to be, just before we vote on this.

Mr. Ballinger moves that subsections 23(1), (2), (3) and (4) be struck out and the following substituted therefor:

"(1) Any public authority or any person who has a contract with a public authority that requires aggregate for a temporary project from a source in a

part of Ontario designated under section 5 that is not under licence or permit may apply to the minister, on a form provided by the minister, for a wayside permit to operate a pit or quarry.

"(2) Subsection 7(1) does not apply to a person who has a wayside permit.

"(3) An application under subsection (1) shall not be considered unless, in the minister's opinion,

"(a) the aggregate is required

"(i) for a project of road construction or road maintenance from outside the limits of the right of way of the highway, or

"(ii) for an urgent project for which no alternative source of aggregate under licence or permit is readily available in the vicinity; or

"(b) the aggregate is necessary for the purpose of a contract or project; and

"(c) adequate provision can be made as conditions of the permit to ensure a method of operation and rehabilitation, so as to cause only a temporary inconvenience to the public."

Mrs. Grier: I hate to do this, but do you need to have an "and" at the end of (a)?

Mr. Yurkow: No.

Mr. Chairman: Our legal adviser says no. Okay? Ready for the question?

Shall subsections 23(1) and (2) and subsection 23(3), as amended, carry? Carried.

Mr. Fleet: There is no subsection 4, I think. Is that correct?

Mr. Chairman: There will be no subsection 4 now, so we are going to be considering subsection 23(5), which is carried.

Mr. McLean: Where is 4?

Mr. Chairman: There will be no 4, but this will be renumbered when they finalize the act.

Shall subsection 23(6) carry? Carried. Shall subsection 23(7) carry?

Mr. Wildman: Wait a minute now.

Mr. Chairman: Before we get to this next one---

Mr. Wildman: Just a second. On 23(7), the minister is to serve a copy of the application and accompanying documents upon the clerk of the municipality. When is this to happen? Is it after the minister is satisfied that the application---

Mr. Ballinger: Yes, after he is satisfied that all the requirements have been fulfilled.



Mr. Wildman: All right, fine. Thank you.

Mr. Fleet: On a point of order, Mr. Chairman: There is a series of three amendments that the New Democratic Party has put forward. I am just wondering if we have now gone out of order, unless I missed something. I have numbered them. What I call number 28 involves subsection 23(2a), and I am wondering if we should go back and look at that one now.

Mr. Chairman: I was going to point that out too. There is one under subsection 2a, an additional 2a.

Mr. Fleet: It is an add-on. They are in a slightly different order in the packet that we were given. It is the second one of the three, if I understand them right.

Mr. Chairman: I just ran across it, because you also have one to insert a subsection 23(8), which I have two copies of.

Clerk of the Committee: There are two subsection 8s.

Mr. Fleet: There is one for 2a and then, you are quite correct, there are two proposed subsection 8s. I am not sure in what order we want to deal with them.

Mrs. Grier: I guess we had a fallback position. We have to figure out which is the fall and which is the back.

Mr. Ballinger: We did not intentionally mean to throw everybody off.

Mr. Fleet: The 2a, I think, is an add-on.

Mr. Wildman: The one we have for 2a is in line with one of the government's. I am trying to find it and I cannot.

For my assistance, is there, in the bill, a suggestion that the removal of stockpiled aggregate on a normal, licensed operation is an operation and requires a permit? Is that in the act, or am I wrong?

Mrs. Grier: It has to be specified on the site plan.

Mr. Scott: It is specified on the site plan and so controlled in that method, but for licences, I do not recall anything in the act of that nature.

Mr. Wildman: So it is in the site plan, and what we were attempting to do was require the same thing for wayside permits.

Mrs. Grier: Where there is no site plan.

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Mr. Scott: Maybe I can clarify. On wayside permits, we do have a plan. It is not as detailed as for a full big licence, but we do have a plan and we require them to show what they are going to do, where they are going to pile the material and so forth. With a wayside, unless there is a very special case where we allow for this because of some special circumstance, but it is very rare, we do not normally allow them to leave a stockpile on the site.

What we normally require them to do nowadays is level any material, either overproduction they have done or any topsoil, put it back on the site again and close up the site.

If they want to take that extra material off the site, they would have to get another wayside permit. That is automatic, because of the way the act is written. They would not be able to take that off without either a wayside permit or going to a full licence on the property. That type of concern is already addressed in the way the act is written and the way the law would require that to be an automatic fact.

Mrs. Grier: Okay. Part of our concern around this whole issue, of course, is successive use of the same property. How is that addressed in the amendments that have been drafted by you?

Mr. Scott: We do not allow multiple waysides. That is in the bill at the present time, so you cannot have two, three or four waysides on the same property at the same time. We feel that is a good way to look at how to manage these sites. There is a limitation on the number of waysides you can have on any given site that is going to be put forward in the regulations as well.

Mrs. Grier: In the existing regulations?

Mr. Scott: In the new regulations, the proposed regulations.

Mr. Wildman: I am sorry. Because of the order I had, I should have put it to a previous—

Mr. Chairman: It is no problem. If you want to put it, put it.

Mr. Wildman: Yes, I would like to.

Mr. Chairman: Mr. Wildman moves that section 23 of the bill be amended by adding thereto the following subsections:

"Stockpiled aggregate

"(2a) The removal from a site of stockpiled aggregate or topsoil excavated under a wayside permit is an operation of a pit that requires a wayside permit."

This will be designated "(2a)." Any further comment, Mr. Ballinger?

Mr. Ballinger: Because of a wayside pit being of a temporary nature, we will not be supporting the amendment.

Mr. Chairman: All right.

Those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: The other notification of amendment had to do with adding a subsection 8.

Mr. Wildman: Right.



Mr. Chairman: There are two of them, so we await your pleasure on that.

Mr. Wildman moves that section 23 of the bill be amended by adding thereto the following subsection:

"Notice

"(8) On the day that the minister effects service under subsection (7), the minister shall serve the applicant with notice that the applicant must cause notice of the application,

"(a) to be published in the prescribed form in two successive issues of a newspaper or newspapers having general circulation in the locality in which the site is located; and

"(b) to be given in signs placed in the prescribed manner on the site.

"Notice of publication

"(9) The applicant shall notify the minister when the publication of the notice and the placement of the signs have been completed."

Mr. Wildman: This is simply a bringing the bill in line, dealing with wayside pits, with the government's own amendments to section 11, with licence operation.

Mr. Ballinger: You are too exuberant in your cross-referencing there. This is one on which we would like to support you, but we cannot. We think that we have clearly defined the temporary nature of wayside pits. They are obviously not in the same league as permanent licensing in the process, and the requirements that Mr. Wildman is attaching here are the same requirements that are being used for a permanent licence operation.

We believe that we have clearly identified that these wayside pits are of a temporary nature. Therefore, in that process municipalities are being notified, and we just happen to believe that these amendments are not necessary, given the fact that wayside pits are clearly defined in the act as temporary.

Mrs. Grier: How would you define temporary?

Mr. Fleet: Not permanent.

Mrs. Grier: There are wartime buildings still in Ottawa, I think, that were put up as temporary accommodations.

Mr. Wildman: There are civil servants working in them, and as I recall, in the First World War we brought in the temporary tax called income tax.

Mrs. Grier: That was one of the criticisms of the interest groups, that there was no more precise definition of temporary.

Mr. Wildman: The other thing is that I understand what the parliamentary assistant is saying, and we will be dealing with that at length, I think, but we just believe that if it is proper to have public notice for

licensed operations, it is also proper to have public notice for temporary ones.

A temporary permit may in fact cause as much problem for the adjacent property owners as a permanent one. The fact that it may be of limited time makes a difference, but still, for that limited time, it may cause just as many problems. We believe that the public should be notified and know what is happening and have the opportunity to make its views known.

I do not think we need to prolong the argument.

Mr. Chairman: Any further discussion? Those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: Mr. Wildman moves that section 23 of the bill be amended by adding thereto the following subsection:

"(8) No wayside permit shall be granted to a person who already has an application for a licence or permit under consideration for the same location."

Mr. Ballinger: We have a serious problem with this amendment, and I will get Mr. Scott to address it, the concern about wayside versus rolling that into a permanent licensing operation. Mr. Scott, if you might, please.

Mr. Scott: Yes. Part of our concern here lies with the fact that we do not want waysides to continue indefinitely, and I think that is quite clear in the way we are going with the wording. But we are also concerned that if people think they can get one or two waysides and they think they can get away with that to start with, if we had this clause in there that you cannot get a wayside if you have applied for a licence, based on our past experience, there would be some people coming in and using up their wayside entitlement first before they went for a licence. That is because they would be concerned that if a job came up in the interim, they would be out of luck while they were applying for a licence, and depending on the property, a licence can take anywhere from six months to five years to get.

With that in mind, we felt that limitation would probably be working to our disadvantage because, as I was saying, people would go forward, use up their entitlement to one or two waysides that they felt they could legitimately get on the property because of meeting the various stringent concerns about waysides, and then they would figure that they made what they wanted out of that type of application of the rules and they would go on and ask for a licence. We have had that situation happening at the present time and we think that this would even accentuate that type of concern.

Mr. Wildman: You had this situation in Erin, where you had the 10-year-long—

Mr. Ballinger: Worst-case scenario.

Mr. Wildman: What was it—22 or 24 wayside permits?

Mr. Scott: I believe there have been 22 operations, but they were not all waysides, because some of it was before the Pits and Quarries Control Act came into play in that municipality.



Mr. Wildman: So they were just unregulated operations.

Mr. Scott: They were unregulated operations, that is correct.

Mr. Wildman: Okay, but you still had 20-some operations, some of them waysides, before there ever was a licence for that location.

Mr. Scott: Yes, and it is now proceeding towards a licence, as I understand it.

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Mr. Wildman: It seems to me that any responsible entrepreneur who believes in the invisible hand of the marketplace, and who perceives that there is a market for the aggregate that is on the property he owns and that there is a substantial amount of aggregate of good quality there, would want to have it licensed and operating. I cannot see that someone would say, "I could go to apply for a licence but I won't do that; I'll wait until I have one or two wayside permits first and then I'll apply for my licence."

Why would it be in their interest to do that? If they have already applied for the application as we have suggested in our amendment, they have already applied for it. We are not talking about someone waiting until after they have had a wayside permit. Why would it be in their interest to say, "No, I want to have my wayside permits first, before actually getting into operation and being able to supply this project with an ongoing operation"?

Mr. Scott: It relates back to the fact that if you have applied for a licence, this amendment would say that you could not get a wayside permit. There may be various jobs going on in the area. The municipality may have road jobs or the province may have road jobs that this person might want to compete on. If he has that property tied up in a licence application which, as I said, could take anywhere from six months to a number of years, he would then be out of luck and would not be able to bid on those jobs.

In many cases, especially in rural Ontario, we would be finding that a lot of the individual farm owners who basically sell their material to the local roads boards, whether it is the township or the county, would be reluctant to apply for a licence knowing that they would be out of luck, possibly for a period of a number of years, in getting any gravel sold from that property under a wayside permit.

Mr. Wildman: But the opposite applies, as well. If this amendment were to pass and they decide, as you are suggesting they might, to have two wayside permits first and then apply for a licence, all they are doing is putting off the delay you are talking about. So if they have their two wayside permits exhausted and a project comes along, they have to apply then and they cannot market their aggregate. I cannot see why it would be in their interest to do that, unless they were sure there were not going to be any projects after the wayside permits.

Mr. Scott: I guess it is the fact that a dollar in the hand is worth two in the bush, that type of approach. That is the analogy we used in assessing what, from a personal standpoint, someone might do under that circumstance.

What we would like to see happen is that any wayside property that should be going to a licence will go to a licence as quickly as possible. We

did not want to have, for one reason or other, some individual using that as a means of his rationalizing why he should not go forward with the licence application, possibly at the same time as a wayside pit is on the site.

Mr. Wildman: I have far more confidence in the private sector than you do.

Mr. Ballinger: Am I glad that is on the record. That will haunt you, my friend.

Mr. Chairman: Is there any further discussion on the amendment? Those in favour? Opposed?

Motion negatived.

Mr. Chairman: That completes subsections 23(1) to 23(7) inclusive, as amended. Does that section carry?

Section 23, as amended, agreed to.

Section 24:

Mr. Chairman: Do subsections 24(1) and 24(2) carry?

Carried.

I have a notice of a slight modification to subsection 24(3) by the government.

Mr. Ballinger: It is strictly a cross-reference that was discussed earlier this morning.

Mr. Chairman: Mr. Ballinger moves that subsection 24(3) of the bill be amended by inserting after "manner" in the third line "and for such purposes."

Mr. Ballinger: To be consistent.

Motion agreed to.

Mr. Chairman: Shall subsection 24(3), as amended, carry?

Carried.

Mr. Chairman: On subsection 24(4): I have notice of an NDP and a government motion.

Mr. Ballinger: Let Bud move it.

Mr. Wildman: It is the same thing.

Mr. Ballinger: It is in response, actually, again--

Mr. Wildman: Once again, on behalf of the Minister of Natural Resources.

Mr. Ballinger: Even when we give you one you give us a hard time.



Mr. Chairman: Mr. Wildman moves that subsection 24(4) of the bill be amended by striking out the word "may" in the second line and inserting in lieu thereof the word "shall."

Mr. Wildman: The purpose of the amendment is clear: to require that moneys be set aside for rehabilitation of abandoned sites. It is exactly the same as the amendment tabled by the parliamentary assistant on behalf of the government. We appreciate the fact that the government has agreed that it should be "shall" rather than "may."

Motion agreed to.

Mr. Chairman: Shall subsection 24(4), as amended, carry?

Carried.

Subsection 24(5)?

Carried. That is the end of section 24.

Section 24, as amended, agreed to.

Section 25:

Mr. Chairman: Subsection 25(1)?

Carried.

Clauses 25(2)(a), (b), (c), (d) and (e)?

Carried.

I have an NDP notice of an amendment for clause 25(2)(f).

Mr. Wildman moves that clause 25(2)(f) of the bill be struck out and the following substituted therefor:

"(f) a plan of survey showing the shape, dimensions and area of the site and the area to be excavated."

Mr. Wildman: I made this same amendment with regard to licensed operations and we had the arguments at that time. We would like to have the plan of survey, which shows the dimensions of the site, to be actually a plan of survey. I do not think it is necessary to repeat the arguments at this time. I am sure the government, overnight, has seen the wisdom of our position.

Mr. Pollock: Do not count on it.

Mr. Fleet: This is a point of order. Do we have this in writing from you or is this just another one coming up?

Mr. Wildman: No, it is in writing.

Mr. Ballinger: It is right here.

Mrs. Grier: It is in our package of amendments.

Mr. Fleet: I am sorry. Okay. I can follow now.

Mr. Ballinger: Not to flog a dead horse, we revisited this argument yesterday as it related to licensed pits and our position is still the same. For that, Bud, I apologize.

Mr. Wildman: No need.

Motion negatived.

Mr. Chairman: Shall clause 25(2)(f) carry?

Carried.

Clause 25(2)(g)?

Carried.

I have a notice here, clause 25(2)(h), on the government side. This one is in the supplementary sheets.

Mr. Ballinger: Yes. This is an improvement over clause 25(2)(h).

Mr. Chairman: Mr. Ballinger moves that clause 25(2)(h) of the bill be amended by including:

"(h) the use of the land and the location and use of the buildings and other structures within 150 metres of the site of the pit or within 500 metres of the site of the quarry."

1520

I have to paraphrase this a bit. Do you mean that the present clause 25(2)(h) is struck out and this amendment replaces it?

Mr. Ballinger: Okay, fine. Because it is one of those ones that do not have a formal preamble, I was guessing.

Mr. Wildman: Actually, all they are doing is adding the words "of the pit or within 500 metres of the site of the quarry."

Mr. Chairman: I think, with the correction I observed, we are in good shape.

Mr. Ballinger: It is an improvement. We are quite specific, site-specific.

Mr. Wildman: We think it is a good amendment. Obviously, a quarry might have more impacts than a pit and extend beyond 150 metres. There is more blasting, for instance.

Mr. Pollock: How does this affect—The township of Thurlow came before this committee and was complaining about this extension of the guidelines around the pit.

Mr. Ballinger: They were speaking of end-use planning.



Mr. Wildman: They were concerned about freezing of land.

Mr. Ballinger: Yes, they were chatting about the end-use planning. We are talking about a buffer zone within the actual specific site.

Mr. Pollock: Oh, okay.

Mr. Chairman: Ready for the question?

Motion agreed to.

Mr. Chairman: Shall clause 25(2)(h), as amended, carry?

Carried.

I have a notice of motion for an (s) and a (t) to be added at the end, so shall clauses 25(2)(i) to (r), inclusive, carry?

Carried.

I have a notice of motion here, Mr. Wildman, that the NDP would like to add two clauses to that same subsection.

Mr. Wildman: Yes. On the first one, though, before I put it I would like a little clarification. In the proposed government amendments, if you look at the amendment to clause 26(ha) and a new amendment that will be proposed when we get to that, as I read that it basically is similar to the motion I am putting here. I am wondering if there is a reason why the government thinks it would be better under section 26 than section 25. I would like to hear that argument before I put my amendment.

Mr. Ballinger: Actually, Mr. Scott just came over and wanted me to point that out. I was just going to hand the ball to Mr. Scott to give you the reason why we have moved that into section 26 instead of section 25.

Mr. Scott: Yes. You are talking about haul routes in particular?

Mr. Wildman: Right.

Mr. Scott: On the site plan, sure you could show where it is going to go off the property and down the road and so forth. We just felt that made more sense, because it is really something, in making the decision and in putting conditions on the permit, we felt better fit into section 26 and was more binding and more onerous rather than just having it on the site plan where it would not necessarily have the same level of significance. In section 26 the minister is basically using that as part of his decision-making powers and his recommending powers as to what type of conditions or enforcement aspects he wants to put on that particular permit.

Mr. Wildman: Okay. In that case, I will not put that. I would like to put the other amendment.

Mr. Chairman: So I am just going to call for the other one?

Mr. Wildman: Yes. It is lettered "(t)" here, but it would be "(s)."

Mr. Chairman: Mr. Wildman moves that subsection 25(2) of the bill be amended by adding thereto the following clause:

"(s) the location and size of existing and proposed stockpiles of aggregate topsoil, subsoil and overburden."

Mr. Ballinger: That will now become letter "(s)"?

Mr. Wildman: Yes. Again, if you are going to have a wayside pit, obviously it would be in the interest of the developer of the wayside to stockpile the topsoil and overburden. We think that where that is going to be stockpiled should be part of the plan for the application.

Mr. Ballinger: We have had this discussion. Again, I am going to have to rely on Dale, from the ministry's viewpoint, as it relates to wayside pits and the problem with this proposed amendment.

Mr. Scott: The answer I gave earlier about the stockpiles, the topsoil and material that have been mined and processed still stands here. We do not want to encourage the leaving or the placement, from a permanent standpoint, of topsoil or stockpiles of aggregate on wayside sites. We see them as a temporary use: You are in, you are out, you have rehabilitated.

I guess the connotation that is left there is that there is some possibility that you can leave those. We would like to control anything of that nature under any other necessary information respecting the site. If there is something of a different nature, we would cover that through our Manual of Administration as to the things that would be required and through the sample site plan we have, which we give out to the operator. He can see what we do require and the type of things we do require on these site plans for waysides. It would cover all those types of issues in that manner rather than make it appear in the legislation that we are approving the leaving of stockpiles on these sites that have been mined in the past or whatever.

Mr. Wildman: I can see your argument as it applies to aggregate, but I frankly cannot with regard to topsoil or overburden. Surely, if it is a wayside aggregate pit and it is going to operate for a certain period of time when a project needs that aggregate, showing where you are going to put your topsoil and overburden while you are excavating the aggregate does not infer, does it, that you are going to leave the topsoil there? Surely, after you are finished you have to rehabilitate and you are going to use your topsoil and your overburden in your rehabilitation.

Mr. Scott: That is correct. The thing with waysides is that they are so short in duration that any stockpile or pushed-up material—Basically, they just scrape it off with a bulldozer, push it into a mound, and then they put it back a couple of months later or even a couple of weeks later, depending on how large an operation it is.

Mr. Wildman: Hopefully, they do not ship it somewhere else.

Mr. Scott: We do not allow them to ship it somewhere else. Actually, there is a safeguard. Once you have a licence or a permit, you cannot take topsoil off the site, whereas anyone out in the countryside who owns the land could go and take his topsoil off any other time he wanted. Once you are licensed or have a wayside permit, there are extra restrictions on your



property that will not allow topsoil to be removed. That is an extra safeguard to having properties licensed.

Mr. Wildman: And you do not think it would be useful to know where they are going to pile it.

Mr. Scott: It is basically because it is short-lived. If there is any other circumstance where we need the information because it is going to be longer in duration, we can have any other necessary information shown as per clause (r).

Mr. Wildman: Okay. I will leave it. I would like us to vote on it.

Mr. Chairman: Is everybody ready for the question? Those in favour of the amendment?

Opposed?

Motion negatived.

Mr. Chairman: That completes subsection 25(2). Will subsection 25(3) carry?

Carried.

Shall section 25, as amended, carry?

Section 25, as amended, agreed to.

Section 26:

Mr. Chairman: Clause (a).

Mrs. Grier: I will save you the arguments on clause (a).

Mr. Chairman: Thank you. So I assume it is carried?

Interjection: Carried.

Mr. Chairman: Clause 26(b)?

Carried.

The government has a clause (ba).

Mr. Ballinger: As well, we tabled yesterday—and I apologize for this. We know it is an improvement to the bill. I also want to include a clause (b) and a clause (ha).

Mrs. Grier: And we agree to both of them.

Mr. Wildman: We have not gone to (h) yet, have we?

Mr. Ballinger: All right, let me do the (b).

Mr. Chairman: Just a second here. We just carried 26(b).

Mr. Fleet: I move that we reopen clause (b), with the unanimous consent of the committee.

Mr. Chairman: Do we have unanimous consent to reopen (b)?

Agreed to.

Mr. Ballinger: Sorry about that, Mr. Chairman.

Mr. Chairman: That is okay.

Mr. Ballinger moves that clause 26(b) of the bill be struck out and the following substituted therefor:

"(b) the effect of the operation of the pit or quarry on the environment and nearby communities."

1530

Mr. Wildman: We welcome this amendment. It is much in line with some of the amendments we have put and we congratulate the parliamentary assistant.

Mr. Ballinger: We appreciated your guidance, Mr. Wildman.

Motion agreed to.

Mr. Chairman: Shall 26(b), as amended, carry?

Carried.

Mr. Ballinger moves that section 26 of the bill be amended by adding thereto the following clause:

"(ba) the amount of aggregate estimated to be removed from the site."

Motion agreed to.

Mr. Chairman: Shall clause 26(ba) carry?

Carried.

Clause 26(c)?

Carried.

Clause 26(d)?

Carried.

There is a slight change to 26(e) from the government side.

Mr. Ballinger moves that clause 26(e) of the bill be amended by adding at the end thereof "and adjacent lands."

Motion agreed to.

Mr. Chairman: Shall clause 26(e), as amended, carry?



Carried.

Clause 26(f)?

Carried.

Clause 26 (g)?

Carried.

We have a (ga) from the NDP.

Mr. Wildman moves that section 26 of the bill be amended by adding thereto the following clause:

"(ga) the need for the wayside pit or quarry given the availability of aggregate from existing licensed sites."

Mr. Wildman: I think this is pretty clear. Obviously, if the minister is being asked to approve a wayside pit or quarry, particularly a gravel pit, for a particular project, whether it be a road or whatever in the area, in deciding whether or not to approve a wayside, key to the decision will be whether or not there is aggregate available. If there is not aggregate available of the quality needed for the project, then that would be one reason the minister would want to approve a wayside pit.

However, if there is already a licensed operation in the area that is providing or can provide the aggregate in the quality and quantity that is required for the project, then there is really no need for the wayside.

Mr. Cordiano: Is that not in clause (d)? That would be "the proper management of the aggregate resources of the area." Obviously, that would be taken into consideration. That is my two cents for the day.

Interjection: That is very good.

Mr. Cordiano: I am following this.

Mr. Fleet: Given Mr. Wildman's attachment for the invisible hand of Adam Smith and otherwise, I would suggest that clause (c), which we have just approved, really more than covers the point he is trying to make. Presumably, there is aggregate available somewhere in the world, given the cost figure, of whatever type you desire; therefore, by having a consideration of the estimated cost of an alternative source, that is the reality of the process. That is really the consideration that takes place. That is a factor of the need, I would have thought.

Mr. Wildman: Actually, I think Mr. Cordiano's comment is a little more apropos than Mr. Fleet's.

Mr. Ballinger: That is the beauty of having six individuals.

Mr. Fleet: He will love one of us.

Mr. Wildman: The problem with (d), though, is that proper management of aggregate resources is—

Mr. Cordiano: Discretionary.

Mr. Wildman: Yes. How do you determine what is proper and what is not? That is subjective. But I do not accept that it should be simply on the basis of the cost of aggregate from alternative sources.

Mr. Fleet: You like the invisible hand.

Mr. Ruprecht: Will you straighten him out? You do not like the invisible hand.

Mr. Wildman: To be frank with you, the invisible hand, if it exists, is simply greed and I am not in favour of greed. I do not think we should be putting everything down on the basis of cost, because in that case a proposal for a wayside might argue, I suppose, "Sure, there might be aggregate available half a mile down the road, but I'm prepared to provide that same quality of aggregate at slightly less cost than the operator of the licence half a mile down the road."

The minister would be put in the position of saying, "Well, if cost is the main factor in this regard, then I should approve the wayside," when the proper management of the aggregate resource might better require that the wayside not be approved. If at some future date someone wants to have a licensed operation in that area, then the minister can consider it under the other provisions of the act.

Mr. Chairman: Is there any further discussion on the amendment to insert clause (ga) in section 26? All those in favour? Those opposed?

Motion negatived.

Mr. Chairman: Before we go any further, Mr. Wildman, I have a question. I just noticed, because I flipped the page, that there was something with respect to the Niagara Escarpment in clause 26(a)?

Mr. Wildman: Mrs. Grier said she decided not to inflict the same argument on us again.

Mr. Chairman: I did not catch that.

Mr. Wildman: I have one to clause (h) as well. We have not carried (g) the way it is, though, have we?

Mr. Chairman: Clause 26(ga) would be separate. Clause (g) was carried.

Mr. Wildman: Fine. I have one to (h).

Mr. Chairman: I now would entertain your amendment with respect to clause 26(h).

Mr. Wildman moves that subsection 26(h) be amended by striking out "aesthetic improvements to" in the first line and inserting in lieu thereof "visual impacts on."

Mr. Fleet: Not to split hairs too finely.

Mrs. Grier: That is not splitting hairs. There is a very real difference between "any proposed aesthetic improvements to the landscape" and the "visual impacts on." I do not understand the wording in the bill.



Mr. Ballinger: What about clause (b), as amended?

Mrs. Grier: It perhaps has some relevance.

Mr. Ballinger: "The effect of the operation of the pit or quarry on the environment and nearby communities."

Mrs. Grier: Perhaps the parliamentary assistant can explain to me why it was put in the form of "any proposed aesthetic improvements," rather than "aesthetic impacts." What is the improvement: the pit, the rehabilitated pit or the lack of a pit?

Mr. Fleet: Aesthetic improvements are the same as rehabilitation.

Mr. Chairman: Perhaps we can call on our resident expert here, Mr. Scott.

Mr. Ballinger: That is why he gets paid.

Mr. Scott: I think everybody here will be an expert by the time we are finished.

Mr. Ballinger: At \$86,000 a year, you should know what you are talking about.

Mr. Scott: On the record, I wish that were the case.

Mrs. Grier: But he does not get per diems.

Mr. Scott: Now, where was I? In terms of the concern you are trying to address, we believe that is covered by clause (b), as Mr. Ballinger has indicated: "the effect of the operation of the pit or quarry on the environment and nearby communities." That is basically addressing it from an impact standpoint.

We were trying to address down further some of the benefits that can be gained from a wayside permit where there has been an old scar on the landscape. There may be a very small amount of material on a property such as a small, little kame with some sand in it or whatever is needed for a road job. We get this all the time down in the Simcoe, Aylmer and Tillsonburg area: there are these little sand domes, and the farmers down there cannot farm the land because of those little hills on the landscape. They want them removed by the municipality for its road jobs so they then have a level field for farming.

1540

By this statement, we were trying to address the benefits of taking these small deposits off. Just trying to put it back into perspective, we feel (b) is addressing what we call the environmental impact, which is what you are talking about, I believe, and (h) was trying to address on a site-by-site basis some of the benefits that could be addressed by having a wayside permit on them.

Mr. Wildman: Obviously the difference between our position and that put forward by the parliamentary assistant and Mr. Scott is that we are concerned about the actual visual effect of a wayside operation, and we think that is what the minister should be considering, whereas their position is that the proponent of a wayside might be able to say, "Well, after we have

excavated this material there will be an improvement to the area." To use his example of the little hillock of sand, the sand dome, I think our amendment would cover that. Obviously, the visual impact of a flatter field would be covered by our amendment and we would be talking about what it actually looks like rather than what someone might propose would be an improvement at some future date.

Mr. Cordiano: Is that not covered under clause 25(2)(p), where you have the rehabilitation plan? Would that not be spelled out in some more detail with respect to what alterations you are making to the landscape at that point when you have the rehabilitation plan, together with the site plan, as part of the site plan?

Mr. Scott: That would cover it as well, but it is extra detail that could be brought in. That would not be in the same section, but it is indeed extra information that is used in making the final decision.

Mr. Cordiano: That is in the site plan?

Mr. Scott: Yes, it is.

Mr. Cordiano: It gives you a very definite kind of idea as to what is going to take place after the pit is rehabilitated.

Mr. Scott: Yes, and it is binding on the operator as well.

Mr. Wildman: I think it is far too subjective, but I understand the argument.

Mr. Chairman: Further comments, Mr. Ballinger?

Mr. Ballinger: No, thanks. I appreciate the opportunity, though.

Mr. Chairman: Those in favour of the amendment to clause 26(h)?

Motion agreed to.

Mr. Ballinger: I move that section 26 of the bill be further amended by adding the following clause---

Mr. Chairman: Could you hang on for just a minute, please? Can we have clause 26(h) carried?

Carried.

Now, Mr. Ballinger.

Mr. Ballinger: There is a saying in life, "Once a teacher, always a teacher."

Interjection: He is a good chairman.

Mr. Chairman: Mr. Ballinger moves that section 26 of the bill be further amended by adding the following clause:

"(ha) the main haulage routes and proposed truck traffic to and from the site."



Mr. Wildman: This is the same amendment we were going to put to subsection 25(2), so we are in favour of it.

Mr. Ballinger: I might add on behalf of the minister, Bud, your counsel was taken into consideration as well as that of those interest groups that appeared before the committee during the open hearings, another example of co-operation in action. I had to say that, Ruth. I just wanted to see the expression on your face.

Mr. Chairman: Clause 26(ha) then, I take it, carries?

Motion agreed to.

Mr. Chairman: Clause (i) is carried.

Section 26, as amended, agreed to.

Section 27:

Mr. Chairman: On subsection 27(1), I have a government notice of amendment.

Mr. Ballinger: I think we have heard this one before, but maybe we had better again.

Mrs. Grier: We have one of ours about the Niagara Escarpment, which I will withdraw.

Mr. Chairman: You are withdrawing the one on the escarpment?

Mr. Wildman: We have not put it yet.

Mrs. Grier: This is one section where the ministry has acknowledged the existence of the Niagara Escarpment.

Mr. Ballinger: I move that section 27 of the bill be amended by adding thereto the following —

Mr. Chairman: Whoa.

Mrs. Grier: If there is a government amendment to subsection 27(1), we have not got it.

Mr. Chairman: I believe they are out of order. In that packet, they are out of order by one.

Mr. Ballinger: In the original 42 amendments.

Mrs. Grier: But is it not printed in the act?

Mr. Ballinger: Yes, it is printed in the bill. I just have to read this for the record.

Mr. Wildman: Is it number 3?

Mr. Ballinger: This is subsection 27(1). It is a housekeeping. We have moved it to another section.

Mrs. Grier: Okay. Well, let's hear it.

Mr. Chairman: The slash down the left-hand side means the same thing as an arrow in this instance. I am not exactly sure why.

Mr. Ballinger: We moved it to another section; I will allow Mr. Scott to identify the reasons.

Mr. Chairman: Mr. Ballinger moves that subsection 27(1) of the bill be amended by striking out "subject to such conditions as are considered necessary and" in the second and third lines.

Mr. Scott: What we are trying to do is consolidate all of the condition-making power in section 30, rather than in section 27 where it was earlier. It is a housekeeping issue, trying to rectify that ambiguity and possible confusion we had.

Mrs. Grier: You have relocated the section you took out to somewhere else, or you have just eliminated it?

Mr. Scott: No, we have not eliminated it. We have taken it from there and put it in section 30 because we felt that it better fit in that location.

Mr. Wildman: Well, Mr. Chairman, as you know and are fully aware by this time, I am sure, we are not happy with sections of the bill that deal with giving the minister discretion to override zoning bylaws, and as a result we are opposed to the whole section.

Mr. Chairman: Those in favour of the amendment to subsection 27(1)?

Opposed?

Motion agreed to.

Shall subsection 27(1), as amended, carry? Same vote?

Mr. Wildman: Same vote.

Mr. Chairman: Carried.

Shall subsection 27(2) carry?

Carried.

Mr. Ballinger: Mr. Chairman, again I apologize for this. We have a subsection 27(3) and 27(3a). The amendment to subsection 27(3) was in the original 42 amendments, and subsection 27(3a) was in the amendment passed out yesterday. Can we do it with the original then, please?

Mr. Chairman: Mr. Ballinger moves that section 27 of the bill be amended by adding thereto the following subsection:

Niagara Escarpment Planning Area, RSO 1980, c. 316

(3) Despite subsection (1), no wayside permit shall be issued for a site in the Niagara Escarpment planning area, as defined in the Niagara Escarpment Planning and Development Act, unless the location of the site complies with a development permit issued under that act.



Mrs. Grier: Perhaps it would be impolite, but I would like an explanation as to why it was felt necessary to spell out the Niagara Escarpment planning area and the planning and development act so specifically in this section, given the vehemence of the ministry's arguments against including it anywhere else I suggested it.

1550

Mr. Scott: We felt this was quite a different circumstance than the other ones that were alluded to earlier. In this particular case, we are not talking about zoning bylaws, so the part at the first of the act that comes into play normally throughout the act where this concern about the Niagara Escarpment Commission was brought up is different. Here we do require the opportunity to highlight that particular agency because of its being the only one who has that special status. The other agencies under the planning act zoning bylaws do not pertain.

Mrs. Grier: I do not think I have heard that argument before. I take it then that in subsection 27(1), which is referred to in the amendment to include subsection 27(3), where "all relevant zoning bylaws" is spelled out in subsection 27(1), that definition does not include development permits issued under the Niagara Escarpment Planning and Development Act?

Mr. Fleet: No, it does include it. That is why we need subsection 27(3).

Mr. Scott: Subsection 27(3) is the exception to that.

Mrs. Grier: Everywhere else "zoning bylaws" imply development permit, but in this section it does not.

Mr. Fleet: No, subsection 3 is the exception.

Interjections.

Mr. Ballinger: Go ahead, Dale.

Mrs. Grier: I have got three lawyers—

Mr. Ballinger: That is exactly right, and we are going to defer to Mr. Scott. We are going to refer it to the layman.

Mr. Scott: I am a layman. I am not a lawyer. I do not know if I am proud of that or not, but at any rate, 27(1) does apply. So to get away from that compliance we have put 27(3) in there, basically to overrule 27(1) on that one issue of the Niagara Escarpment area.

Mrs. Grier: I get you. The minister can override all zoning bylaws, but in this case he cannot override the Niagara Escarpment.

Mr. Scott: Right.

Mrs. Grier: You're kidding.

Mr. Fleet: With that restriction on the discretion of the minister, I would think Bud would be ecstatic.

Mrs. Grier: I am ecstatic. I was so stunned I did not understand it.

Mr. Chairman: Any further discussion?

Motion agreed to.

Mr. Chairman: Subsection 3a next?

Mr. Fleet: On a point of order, Mr. Chairman: There is an NDP proposal. I am not sure if they still intend to go with it.

Mr. Ballinger: No, we covered that in section 23.

Mr. Fleet: Is that now withdrawn or not put or whatever?

Mrs. Grier: Our 3(a)?

Mr. Fleet: Well, 3(a) and (b).

Mr. Ballinger: We covered that in section 23.

Mr. Fleet: We talked about it. I just want to make sure we do not miss it if they intend to repeat it.

Mr. Chairman: We have got it. We usually do the government side motions first and then—

Mr. Fleet: Except we are moving off the section. That is why I ask.

Mr. Ballinger: I am at your call, Mr. Chairman.

Mr. Chairman: Have you any comment as to whether we should proceed to subsection 3a before we consider your proposal?

Mr. Wildman: Frankly, right now I am trying to decide whether my amendments that I have tabled are covered in the previous sections.

Mr. Ballinger: Section 23.

Mr. Fleet: I thought we did, but that is why I raised it, because I thought—

Mr. Wildman: I think they are, so if you can just give me a moment, I will try to verify that and you can deal with the government amendment.

Mr. Chairman: We are giving Mr. Wildman a moment.

Mr. Wildman: No, you can go ahead with the government amendment.

Mr. Ballinger: This one is not controversial.

Mr. Chairman: Mr. Ballinger moves that section 27 of the bill be amended by adding the following subsection:

"(3a) Despite subsection (1), no wayside permit shall be issued for a site which is zoned and developed for residential use or is zoned as an area having particular environmental sensitivity."

Mrs. Grier: There is a question on the inclusion of the words "and developed" which bothers me slightly, because it may well be zoned but not yet



developed, an application for subdivision coming in or in process. Is the implication of this that the zoning alone does not trigger the refusal to issue the permit, that it has to be both zoned and developed?

Mr. Scott: We are trying to overcome the problem, and I think I said something about this yesterday—I may be wrong on this—I think I alluded to a subdivider who may like to take 25 feet of gravel off his property and get away without having to have a licence or a permit or whatever else, because that would be a loophole. That is why we had that special clause in the act to overcome that, where the minister could deem that to be a pit.

We do have a lot of properties around the province where they are subdividing for one purpose or another. They have a hill and they want to take material off it. In some cases, that material could be used for a wayside permit for a year or whatever—take the material off, lower the landscape, build the houses—and even though it may be already zoned for housing, they had not actually built any houses there. So yes, we are trying to ensure that there is the opportunity to take that material off a site before it actually gets developed.

Mr. Wildman: I have some problems with that, but I also like very much the part of the amendment that has the last phrase, "zoned as an area having particular environmental sensitivity." On the whole, I think we can accept the amendment.

Mr. Chairman: Ready for the motion? Those in favour?

Motion agreed to.

Mr. Wildman: Mr. Chairman, I will not proceed with those two amendments to subsection 27(3) that I had tabled because, as was flagged by Mr. Fleet, at the time we dealt with section 23, I mentioned they are covered by the government amendment.

Mr. Chairman: Finally, Mr. Ballinger, you have to read into the record subsection 4. That was not in the original act.

Mr. Ballinger: I am sorry. I was already moving on.

Mr. Chairman: I know. I could see you flipping the pages.

Mr. Ballinger moves that section 27 of the bill be amended by adding thereto the following subsection:

"The Lieutenant Governor in Council may make regulations governing and limiting the issuance of wayside permits."

Mr. Wildman: Maybe we should add to one of his duties becoming an inspector.

Mr. Ballinger: He is probably overqualified.

Mr. Chairman: Is there any discussion on subsection 27(4)?

Motion agreed to.

Shall subsections 27(1), (2), (3) and (3a) and subsection 27(4), as amended, carry? Carried.

Section 27 agreed to.

Sections 28 and 29 agreed to.

Section 30:

Mr. Chairman: I believe I have a government amendment to section 30.

Mr. Ballinger moves that section 30 of the bill be amended by renumbering subsections 30(1) as 30(2) and 30(2) as 30(3) and by adding thereto the following subsection:

"Permit subject to conditions

"(1) The minister may in his or her discretion issue a wayside permit subject to such conditions as are considered necessary, including conditions that set out the maximum amount of aggregate that may be removed, the maximum area that may be excavated and, subject to section 31, the duration of the permit."

Mr. Ballinger: It is a slight addition but more housekeeping, and I will get Mr. Scott to explain the housekeeping in the amendment.

Mr. Scott: I talked earlier about moving section 27, or the part of section 27 pertaining to conditions, to section 30. We are trying to get all the conditions, including such things as tonnage, size, the area of the property and time limit in the same area. All matters relating to wayside permit conditions are now contained within the same section.

We think that makes it easier to clarify and easier to understand where we are coming from when we are coming down with various conditions. We also think it is easier for members of the public to grasp, when they are reading it, what it really means by having it all together.

Mr. Chairman: Is it okay?

Motion agreed to.

Mr. Chairman: Shall subsection 30(1) carry? Carried. Subsection 30(2)? Carried.

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Mr. Wildman: I think this is wrongly numbered here in the amendment. I may be wrong.

Mr. Fleet: You want to add it to what now shows up as subsection 3 inside this document.

Mr. Wildman: Yes, because of the government amendment.

Mr. Chairman: We have to go by the old numbers in your amendment.

So we are agreed on subsection 30(2)? Carried. Subsection 30(3)?

Mr. Wildman: With my concern that I flagged before, subsection 2 should carry. I will move my amendment in this case because of our discussion on section 27.



Mr. Chairman: Mr. Wildman moves that subsection 30(3) of the bill be amended by inserting after "located" in the last line "and upon the Niagara Escarpment Commission for aggregate operations within the Niagara Escarpment planning area."

Mr. Wildman: Having listened to the argument proposed by the government on section 27, I think it is important for us to follow through with the notification to the Niagara Escarpment Commission.

Mr. Chairman: Which one are we at here?

Mr. Wildman: It is numbered on my amendments as subsection 30(2), but is subsection 30(3) as a result of the new numbering.

Mr. Ballinger: Dale, do you want to respond to that, please?

Mr. Scott: Okay. I need clarification. We are talking about the Niagara Escarpment one?

Mr. Wildman: Yes.

Mr. Scott: Okay. Sorry, I got confused.

Mr. Wildman: The numbering is different.

Mr. Scott: There are quite a few pieces of paper here. It is similar to what we talked about earlier. It is all one government. We do not think that we need to highlight them. We have highlighted them where they are required to be highlighted as we went through a few minutes ago, but in this particular instance we do not feel that. We have talked with our advisers, both legal and in other ministries, and they feel that we are one government and it is not necessary for this special highlighting in this particular case.

Mr. Wildman: I have heard that argument before.

Mr. Fleet: No kidding. You are finally persuaded. You have seen the light.

Mr. Wildman: No, the arguments that were put on the other side by the government in regard to section 27 persuaded me that we are correct.

Mr. Ballinger: Section 27 is the exception to the rule.

Mr. Wildman: There is no need to go on any further. It is just that we think the Niagara Escarpment should be protected and, in order to have that happen, the Niagara Escarpment Commission should be notified. It should be said in the act that the commission should be notified. It should not just be on the basis that they are another agency of government and there will be some sort of automatic proceeding.

Mr. Chairman: Any further discussion? Those in favour of the amendment? Opposed?

Motion negatived.

Mr. Wildman: I have another amendment. There are two or three of them in here, folks.

Mr. Chairman: This will be a new subsection 4?

Mr. Wildman: Yes.

Mr. Chairman: Mr. Wildman moves that section 30 of the bill be amended by adding thereto the following subsection:

"Limitation

"(4) No wayside permit shall be issued if the issuance will result in more than one wayside permit for one site."

Mr. Wildman: I think that is obvious. We are talking about wayside pits being temporary operations and being related to a need for aggregate for a particular project in the area. If there is already a wayside operation related to one project, if the owner of the aggregate or the developer decides that this aggregate deposit is large enough to serve other projects in the area, in our view there should be an application for a licence for that site to become a permanent operation.

Mr. Ballinger: This subsection 30(4) in your next one, Mr. Wildman, will become subsection 30(5), I guess. Is that how we should be numbering these?

Mr. Wildman: Yes.

Mr. Ballinger: There is no question that we are into, probably, the toughest part of this whole aggregate question when you are talking about wayside permits. We think that we have made, as a government, some very positive steps with the proposed amendments, with the help of Mr. Wildman as the opposition critic—no question about that—and with the assistance of the vested interest groups that were here: more specifically, as you know, the Caledon Ratepayers' Association, as well as the local member who represents it.

When you are talking about the public good, the public interest and the role of the government, we think that by saying "only one permit on one site" with this amendment, and then in the follow-up to the next amendment even putting tonnage limits on it, that is just far too restrictive and does not accomplish the government objective.

We are trying to accomplish a government objective, as well as have regard for those sensitive areas that revolve around a wayside permit. I would say with the greatest respect that we do not think that this proposed amendment accomplishes that. It certainly restricts it; there is no question about that. But we are not necessarily sure that that is in the public good as a whole.

One of our problems here, of course, is that in Ontario it is so diverse. Metropolitan Toronto is not Grey county and it is not eastern Ontario, where there is a substantive difference in the nature, type of applications and the requirement, the local need, more specifically, for road projects. We just happen to believe that this amendment is far too restrictive.

Mr. Wildman: Just briefly in response to that: Obviously we, in proposing this amendment, are not in any way prohibiting someone who owns a site that has a significant amount of aggregate from applying for a licence to operate a pit and to supply the market.



The argument has been made that someone who has that kind of a site should not be prohibited from applying for a wayside permit—"one or two wayside permits" was the argument used by Mr. Scott—while he is in the process of having his application proceeded with. The majority on the committee agreed with that position. So we are now at the position of saying: "Okay, fine. If the person wants to operate as a permanent operator, let him. Let him apply, and even while he is doing that, he can have a wayside permit."

Mr. Ballinger: With the greatest respect, one of the difficulties we find with that premise is that you are presupposing that every wayside pit permit application at one point or other is going to be a permanent licensed operation, and I can tell you that is just simply not true. There are many areas, especially in the urban or the greater Toronto area, as we call it, where the municipality is more than happy to see a wayside permit go in, extract the resource and get out as quickly as possible. Then the site goes back to some sort of end land use that is complementary to the surrounding areas.

Mr. Wildman: I certainly agree with that. My concern then is that if you are going to allow a second wayside permit on the same site, you are prohibiting that from happening.

Mr. Fleet: This is an area that I had a lot of concern about, because it seemed to me that the rationale for a wayside pit was that it was to be a temporary operation. I have certainly asked a lot of questions of the government as to the practicality of doing these things. One of the—

Mr. Ballinger: Want to see my bruises?

Mr. Fleet: We are not ready for that, Mr. Ballinger.

Mr. Ballinger: It is getting slow. We could perhaps provide a little entertainment at four o'clock in the afternoon.

Mr. Fleet: There are two things, I think, that we have to take into account, because I listened with a lot of care and interest, particularly to the people who said, "Well, you know, these things have gone on and on and on."

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The first thing is that the act is now going to have a direct reference to being temporary, so the concept that was intended is now clearly embedded in the act. Second, there are circumstances that are beyond anybody's practical control. I am now referring to section 31 which talks about an 18-month duration to a wayside permit. So a wayside permit is not open-ended; it go for 18 months and then, at the very best, you have to reapply.

But what is going to take place at least some of the time is that conventionally, I take it, the Ministry of Transportation will have a local road operation. They are taking stuff out and then something happens. There is a strike or there is some kind of change in plans. Instead of going for 18 months, maybe now it is going to go for 20 months or 24 months or something. I do not think it is possible, whenever you set your deadline, to avoid that kind of problem where there is a minor extension. What it really gets down to is that the time you have to make a distinction is after the first set of events has gone by and something has intervened; something did not go according to plan.

The difficulty about putting it into the legislation as opposed to (a) having regulations, and (b) just exercising good judgement, is that whenever you set any kind of short deadline in the act, it is invariably going to encounter problems because something was not anticipated. A problem arises and you have absolutely no flexibility to deal with things in a practical manner.

On the other hand, if you set a very long time frame into the act instead of having a wayside permit life of 18 months—making it, say, five years—that would virtually defeat the value of having something that is temporary. So it is a far preferable situation, on balance, in my view, that you have a permit that has a defined period of time. If there is a renewal process at all, and it is not contemplated there ought to be, but if it happens and if somebody can justify some unusual circumstance, then it still comes before the minister who then has the discretion to be practical in the circumstances.

I tried to conceive, myself, of all the ways you might write something up. It just got so cumbersome so quickly that almost with some reluctance, I came to the conclusion that you just have to be practical about it. It makes more sense to have some kind of a regulatory scheme and exercise good judgement.

I appreciate the thrust of the amendment, both this one and the maximum tonnage limit that was proposed, and the rationale behind all the people who came before us. Their concern is that they do not want any past abuses going on. I am convinced myself that if this act is properly enforced, and I believe there is the willpower to do that, those past abuses ought not to be a thing of the future at all and we have a dramatically improved process.

Because we had spent so much time on it, both in the hearings and during these sessions this week and in private, devoted a lot of attention to the issue, I wanted to take this opportunity to expand on the reasons I had and why I was satisfied this was the most logical way to go.

Mr. Wildman: I understand the argument Mr. Fleet is putting forward and I agree with his view that we should be ensuring wayside pits are temporary and that we should do whatever we can to avoid the kinds of abuses that have occurred in the past. I think what we are attempting to do in this amendment and in the one I will put in a moment is to in fact define what the word "temporary" means.

Mr. Chairman: Before I call this particular amendment, I would like to go back and vote on the new subsection 30(4). I did not finalize that discussion.

Those in favour of the amendment that will be subsection 30(4)?

Opposed?

Motion negatived.

Mr. Chairman: Mr. Wildman moves that section 30 of the bill be amended by adding thereto the following subsection:

"(4) The minister shall not issue any wayside permit that would permit or result in the extraction of more than 100,000 tonnes of aggregate from a site."



Mr. Wildman: This amendment was one that was proposed by the Caledon Ratepayers' Association in our hearings. I have not discussed it with their local member, but I am sure she is in concurrence.

Interjections.

Mr. Ballinger: When do you want me to jump in, Bud?

Mr. Wildman: I think that before they decide too quickly on this amendment, the members should look carefully at the 100,000 tonnes. It is not an unreasonable figure, particularly when you consider that in the bill itself when you are talking about licensed operations, you differentiate between large and small by using the figure 20,000 in the class A and class B licences.

We are admitting and agreeing that there are projects, particularly highway and other road projects, that do require the use of wayside pits and that some of these projects may in fact be substantial and need a lot of aggregate, but we think 100,000 tonnes is a significant figure for a wayside operation, particularly when you consider that you might, as I said, have some small licensed operations that take less than 20,000. We are talking about five times as much as a class B licence for a wayside.

This is indeed an attempt to define what is meant by "temporary" and to ensure that a wayside pit is in fact used for that purpose, rather than as a way of getting aggregate out of the ground without having to go through the licensing process. I would hope the members would look at this carefully, in conjunction with the other amendments we will be putting to section 31, which talk about the possibility of the minister actually renewing a wayside permit if that is necessary.

Mr. Ballinger: You are making it tough on us, Mr. Wildman, but I can tell you, on behalf of the minister that we have had many discussions around the wayside permit issue. Tonnage and limits certainly have been one of the issues we discussed, as to the practicality of it in our role, quite frankly, as sort of administrator for the Ministry of Transportation, because that is really what we are chatting about here and that is what wayside permits are for. They are not for the Ministry of Natural Resources.

Mr. Wildman: In some cases in the north they are, but that is--

Mr. Ballinger: Okay; I am being general, but I think you will find that 99 per cent of the time they relate strictly to road programs for the Ministry of Transportation. Tonnage limits for a lot of road projects in Ontario, with a limitation of 100,000 tonnes, are just not practical. There are many major road projects that evolve into the millions of tonnes.

They do not all come out of wayside permits. There is always a combination of many facets on major road projects, even around the greater Toronto area between Highway 410 and Highway 404 in my own riding. They are now extending Highway 401 east to Oshawa; they are taking it from a six-lane highway to a 12-lane highway. Those are major, major tonnage requirements.

We just happen to believe that the 100,000 tonnes, again, is too restrictive, the same as in the previous discussion with the previous proposed amendment. What we are trying to do is find a middle ground where we can provide the resource for the Ministry of Transportation to build roads for

Ontario, as well as have regard for those local communities that are the biggest contributors.

This bill, in my opinion—again, I come from Uxbridge, which has a combination of wayside pit permits and about six million tonnes annually of licensed aggregate going out the gate into the greater Toronto market area. We happen to think the tonnage limitations would be far too restrictive and we believe that this bill, when it receives royal assent, will have addressed the majority of the concerns that relate to wayside permits being temporary and that it will still leaves room for the Ministry of Transportation to accomplish its objectives.

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Mr. Pollock: I would think that in the Haliburton area you might have to truck gravel for a long distance just to accommodate that sort of rule, so I would certainly be opposed to that kind of restriction.

Mr. Wildman: Just in response to that, I do not think that Mr. Pollock, in order for him to make that comment, has looked at the amendments we are proposing for section 31. I ask that you look at this amendment in conjunction with the amendment I am proposing for section 31 where it would make it possible for a renewal of a wayside.

Mr. Ballinger: That is what I said; you are tough. I did not know you were a hardball player.

Mr. Chairman: Further comments?

Those in favour of the amendment?

Those opposed?

Motion negatived.

Mr. Chairman: That completes section 30.

Section 30, as amended, agreed to.

Section 31:

Mr. Chairman: On section 31, there is a notice of an amendment by Mr. Wildman.

Mr. Wildman: I am not really sure whether I should put this amendment, considering what happened on the last one, but I guess I will go ahead anyway.

Mr. Chairman: Mr. Wildman moves that section 31 of the bill be amended by adding at the end thereof, "but, in the latter case, the minister may renew the permit for such further period not exceeding 18 months as the minister considers appropriate for the completion, in good faith, of the project or contract."

Mr. Wildman further moves that the said section 31 of the bill be amended by adding thereto the following subsection:



## "Limitation

"(2) No wayside permit shall be issued in respect of a site during the four-year period following the expiration of the previous permit in respect of that site."

Mr. Wildman: These amendments, by the way, were suggested by the Caledon Ratepayers' Association. The purpose of the first one is actually to give the minister some more discretion, to allow the minister to extend a wayside permit beyond the 18 months for a period not exceeding 18 additional months if the contract is not completed in that period. That, I think, should have answered a number of the concerns members raised with regard to the last amendment. At any rate, that is the purpose of this amendment.

The second part of the amendment, subsection 2, would say, "All right, once you've completed a wayside operation, whether it's been given an extension by the minister or not, the minister then cannot give another wayside permit on that same site for a period of four years." That is to avoid the kind of abuse we have seen in some parts of the province, such as in Erin township where you had continual wayside permits allowed on a particular site. We are allowing the minister to, in effect, allow for wayside permits to continue for 36 months, for three years. After that you cannot have another wayside on that site for at least four years. That, I think, helps to define "temporary." It is quite an expanded view of temporary in my view.

Mr. Chairman: Before we get any further comment, I propose to vote on these two items separately, but we can discuss them together. One is in subsection 1 and the other is a new subsection 2. I think they are related so we might as well talk about them all at once.

Mr. Wildman: Yes, they are related.

Mr. Ballinger: Okay. In the discussions we had related to these proposed amendments, there was obviously some concern by the staff about the logistics of the four-year period versus the 18-month period after one had been applied for. I wonder, Mr. Scott, if you could help us out by expressing the concerns that the staff have in relation to this amendment.

Mr. Scott: Right. This is fairly complex. In trying to put your proposed amendments in keeping with the amendments that the government was putting in, we have to keep looking back to what was put in before and so forth.

Mr. Ballinger: We did that to try to confuse Bud, but obviously it is not working, so we are going to have to work out another tactic here.

Mr. Scott: One of the key ones that we have put in which has to be referred to as well is clause 26(ba), "the amount of aggregate estimated to be removed from the site." Right up front, in considering an application, the minister has to review that particular aspect before he goes forward with anything else. We feel that is partially what you are suggesting as well. There are several other things that we have entered.

I am not going to go back through all of the different ones that have gone in through the various sections on waysides. When you put all those together and also take the concern that your suggestion is going to address basically one project, one job whereas we are trying to address the situation on an individual property where there may be one big job that comes along but

there may be a small amount of material or whatever left on the site and the municipality or someone else may come along, it is a different job altogether, where we might want to issue a wayside permit to finish that site up. Or maybe two. Who knows?

In discussions with the interest groups, including municipalities, the Niagara Escarpment Commission and the residents in such areas as Caledon, I do not think they were necessarily saying one and out. At least if we looked at all the interest groups, they were not saying that. They were basically saying, "We want something that is reasonable in time duration and in how it is handled." We have tried to address your concern in a slightly different manner with some of the sections that we have already entered plus the regulations being much more specific about how waysides are to be handled, dealt with, reviewed, approved and rehabilitated.

We are trying to address that same concern in a slightly different manner through different parts of the act, recognizing that one and out or one and a renewal of that same project is not necessarily the proper way to deal with it, because some of the sites may need a little bit more flexibility depending on the circumstance.

Mr. Wildman: I am sorry but in this case I just cannot accept the argument that Mr. Scott has put forward. The whole definition of waysides that we have been dealing with this afternoon has been related to a project. The main argument that has been put forward by the government for the need for waysides is that you will need aggregate, particularly for road projects, where there may not be licensed operations that can meet the demand close enough at hand.

Mr. Scott: Right.

Mr. Wildman: The definition we have had of temporary was that it was related to a project. We have accepted that. We agree. You do not have a definition of waysides in here, but it is inferred from the regulations, the sections dealing with waysides, that waysides are defined as pits related to particular projects. Now to argue that you cannot accept this amendment because there may be a demand for that aggregate from another project is to open the floodgate and to allow for the kind of abuse we have had in the past, to say: "Okay. Sure, we've got a wayside pit in this location for this particular project. But there is another project that we need a wayside pit for and we'll get it from that same site."

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Then there may be another one and another one and another one. That is what has happened in the past and that is what we are trying to prevent. To argue that it is related to a particular project is fine, and we have allowed for an extension if that project is not completed within 18 months. I do not know of a lot of road projects that are not completed within 18 months, but there could in fact be ones that take up to three years, and we have allowed for that in this amendment.

Mr. Ballinger: Highway 514.

Mr. Wildman: It has not been completed adequately, but the government thinks it is completed, unfortunately.

To argue that somehow you have to allow for more than one project to be



served from one site with more than one wayside permit on that site, I think, is to open the way for the kind of abuse we have had in the past.

Mr. Scott: The way it is written, with the various amendments that have been put in, I think has tightened it considerably. I do not think that the amount of flexibility I am talking about is opening the floodgate. We are basically talking about a couple, and in the regs we were going to define in more specific terms exactly what it means and where it means you do certain things and do not do other things. That is how we felt that it better addressed it, because in the future we may want to get even tighter on waysides.

In that regard, having it in the regulations would allow for that to be an opportunity and we would be able to deal with certain circumstances in specific areas with a much more onerous requirement in those areas which may require it, versus other areas of the province where that flexibility is still required to allow maybe three or so waysides on the same site before that property is closed up. That is the type of flexibility we see.

Basically, we have situations across the province where there are very large waysides because of urbanization and we have very rural areas, and I will use the northern part of southwestern Ontario. Indeed, if we designate northern Ontario, the circumstance would be even greater up there because there are not that many commercial sites and waysides would be a very large component of the supply of material for municipal and MTO jobs in northern Ontario. We would have to have that flexibility, because—

Mr. Wildman: A large portion of those are on crown land.

Mr. Scott: There are in certain areas, but even along the north shore of Georgian Bay and through Parry Sound and the North Bay area, that is mainly private land and there are not that many urbanized areas there that support commercial pits. Most of the material for those municipalities and for those highway jobs of the province would be required to come from wayside sources and we need the flexibility if we do indeed go with the designation of the whole province. That is why we are suggesting that by dealing with it in the regs we are able to control and manage those circumstances that would create undue hardship in those more rural and northern areas.

Mr. Wildman: While the person is operating a wayside for the first 18 months, if he needs an extension for the particular project, this would allow for it. If he thinks there are going to be other projects in the area for which his aggregate would be needed, he could be applying for a licence, which you said would take from six months to five years.

Mr. Fleet: There was a comment I made earlier about the problem that every time you set up a rule in this particular circumstance you lose flexibility and you lose a certain element of scrutiny. The proposed amendment, in my view, reveals that kind of problem.

In fact, in some respects the proposed amendment is less protective of environmental concerns, and I am not sure that would seem apparent, but what the proposed amendment says is that the minister may renew a permit. The government's position is that when a permit expires at the end of 18 months, you have to reapply. I did not understand your amendment to do that. It would just be in effect an extension.

It seems to me there is a greater degree of protection by making people

reapply, because it involves a fresh consideration. It also goes to the second part of the reaction, I think is the best way to put it, that you had about picking another site. That kind of a process cannot go on beyond the 18 months when they are forced to go and reapply again. They can go and reapply and justify another site, if they can do so, but at least it makes them go through the process. At least it makes them go through a form of scrutiny.

When I looked to the problem of the four-year period following the expiration of a previous permit, it is the same lack of flexibility. At that point, maybe somebody can make a valid case in an isolated area where you do not want to wait four years, and this provision would prohibit that. So again, you have the loss of flexibility.

Given the evils that we are dealing with, it seems to me that the lesser evil is to have a regulatory scheme that is effective, in the light of all the other provisions in the act. It is not like we are abandoning the concept of temporary. We have embedded that in the act.

I appreciate very much the thrust of the amendments. I am not sure that they really advance the cause intended as effectively as what the government is proposing, albeit it may give you a sense of security to be able to see it in the act as opposed to in the regulations. I am not so sure that that in fact delivers what we want. In fact, on balance, I am persuaded it would not and we are better off with a regulatory scheme that we work effectively.

Mr. Wildman: In response to Mr. Fleet, I understand his argument. However, if you read section 31 closely, there is absolutely nothing in that wording as it is stated to prevent an owner of a particular location applying for a wayside pit permit for a particular project, having it go for the period of the project or up to 18 months, and having it expire, then coming back to the ministry and saying, "We want to apply for another wayside permit," having it go for 18 months and coming back again and applying for another wayside permit and having it go for 18 months, and have this go on for ever.

There is absolutely nothing in that section that prevents that from happening, to have a sequential number of wayside pits that could operate for up to 18 months and continue doing that, instead of getting a licence.

Mr. Ballinger: I think Mr. Scott touched on it, and so did Mr. Fleet. That process will be addressed at the regulatory stage. In fact, that is where it should be, which will provide the flexibility. Everything changes: the economy changes and market conditions change. We are really talking about aggregate that is used for the public good. We are not talking about anything else here. We are talking about aggregate wayside pits that are used for the public good and in the public interest.

Mr. Wildman: I do not think we need to prolong it.

Mr. Chairman: I would like to interject and give Mr. Pollock and Mrs. Grier a chance. They were actually on the order paper as the last two speakers.

Mr. Wildman: Oh, I am sorry.

Mr. Ballinger: Sorry, Mr. Chairman.

Mr. Pollock: I think of, say, Highway 507, which Jim Snow described one time as nothing more than a cow path---



Mr. Ballinger: Is that the one they called the James Snow Parkway?

Mr. Pollock: No.

Mr. Ballinger: Oh.

Mr. Pollock: That particular road is about 20 kilometres long. Of course, the population is pretty sparse up there, so they would only come up and do a section of it when they had money; and too often, they did not have the money to do it. So some restrictions of this nature would even help to restrict getting a road built up in that area, and Lord knows we have had enough problems getting roads built in those areas anyway.

But you had to be a little bit reasonable because, after all, the population was sparse and you just were not accommodating a lot of people. Then when the economy was down a bit in 1982, why, you know, you had to be a little bit reasonable and agree you had to set priorities. They would do some work on that highway and then they would miss a year, and I would think that this kind of a restriction would interfere with that.

Mrs. Grier: I am looking at subsection 12(4) of the existing legislation, the Pits and Quarries Control Act, which is precisely the same wording we are suggesting in our amendment, except that it provides for one year, if the permit expires after one year. I am wondering why our wording is not acceptable, given that we are giving even more leeway by 18 months as opposed to a year.

Mr. Scott: They are not necessarily identical. In this particular case, we are saying, "If you've applied for a permit,"—that is the old P and Q act—"you can have a renewal of that same permit." So we are basically allowing for renewals without going through the application process.

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Mrs. Grier: And we are saying a renewal not exceeding 18 months, so we would be limiting the sequential renewals.

Mr. Scott: Right. Under the new Aggregate Resources Act we are not allowing renewals; it is a new application. That is the difference. In our section 26 of the new act, the minister would have to look at any previous wayside permits for the site and adjacent lands when he is making a new issuance of a new wayside permit.

That would pertain to whether it was the same project even. If it were road 403 or 401 or whatever, he would have to review it all over again. He is basically doing a new application with a new permit being issued. Each case is on its own, and that is part of the difference between the two pieces of legislation, so that is an extra benefit from a safeguard standpoint compared to the old Pits and Quarries Control Act and part of the amendment that you are suggesting.

Mrs. Grier: Will you refuse to issue another permit until after the expiration of the existing one, or is somebody going to start quarrying and immediately get his application in for his next permit?

Mr. Scott: No, you would have to wait until the other one is expired.

Mrs. Grier: And then apply? Then go through the process?

Mr. Wildman: What if it is for another project?

Mr. Scott: If it is for another project or if it is for the same project, you could apply, but we would not issue anything and there would be no new paper putting it in force until such time as the existing permit on that same project had expired.

Mr. Wildman: What if they were two projects and one started while the other one was in operation already?

Mr. Scott: You cannot do that. Not by this legislation.

Mr. Wildman: I thought that was one of the explanations you gave me.

Mr. Scott: No, what I meant was, if contract A was on that site and it completely finished and contract B came along and they wanted to use the same site, we would issue a completely new permit and it would have to be after the first permit was completed. It was all finished time-wise, date-wise and everything else.

Mrs. Grier: But you would process it while the existing permit was in operation.

Mr. Scott: We may still be able to process it, look at it, but we would not be able to issue it. We would not be able to finalize the decision until such time as the one had cancelled.

Mr. Chairman: Are there any further questions or comments? Are you ready for the question then? Those in favour of the amendment? Those opposed?

Motion negatived.

Mr. Chairman: That was the first part. Same vote for the second?

Motion negatived.

Mr. Chairman: Shall section 31 carry?

Section 31 agreed to.

Section 32:

Mr. Chairman: Shall subsection 32(1) carry? Carried. We have notice of an amendment for subsection 32(2).

Mr. Wildman: We will not put it.

Mr. Chairman: Are you withdrawing it?

Mr. Fleet: When you get to subsection 32(3), could you just slow down for a moment so I can ask a question?

Mr. Chairman: Okay. Shall subsection 32(2) carry? Carried. I am slowing down.

Mr. Fleet: I wanted to have Mr. Scott put something on the record as to the government's understanding. There is a provision in subsection 3 that says, "The minister may suspend a wayside permit for any period of time not exceeding six months."



I do not have any problem with the notion of having a suspension. I just wanted to have it clear on the record that the government intends to use the suspension period as absorbing part of the 18-month permit, so that if a party has his licence suspended—or I should say his permit suspended—he does not get to extend the 18-month life of the wayside permit by the length of the suspension.

Mr. Scott: That is correct. In essence, subsection 32(3) is a means of penalizing someone who is doing something wrong. If he has a permit life of six months or a year, he will have to meet his obligations under that permit in the time period he was originally given. If he does something wrong in that time period and we slap a suspension on him for one reason or another, he will not have that total permit life extended by whatever the duration of the suspension is. So, in essence, he is penalized.

Mr. Fleet: Thank you very much.

Mr. Chairman: Shall subsection 32(3) carry? Carried. Shall subsection 32(4) carry? Carried. Shall subsection 32(5) carry? Carried.

Section 32 agreed to.

Section 33:

Mr. Chairman: We are now starting part IV entitled "Abandoned Pits and Quarries." Clause 33(1)(a)? Carried. Clause 33(1)(b)? Carried.

We have a notice of an amendment for subsection 33(2).

Mr. Wildman: No, that would be redundant now because of the amendment that was carried to subsection 14(5), I believe.

Mr. Chairman: So you are withdrawing?

Mr. Wildman: Could I just confirm that with legislative counsel? I believe it is correct that it now would be redundant.

Mr. Yurkow: You will have to go through that again.

Mr. Wildman: I think that this amendment that we had tabled for subsection 33(2) would now be redundant because of the amendment that was already passed for subsection 14(5).

Mr. Yurkow: Let's see what subsection 14(5) says.

Mr. Wildman: The amendment we carried which was in this—

Mr. Yurkow: Yes, you are correct.

Mr. Wildman: Okay, thanks. We will not put it then.

Mr. Chairman: Shall clause 33(2)(a) carry? Carried. Shall clause 33(2)(b) carry? Carried.

Section 33 agreed to.

Mr. Chairman: We are beginning part V, "Aggregate Permits," which is quite a bit lengthier than part IV. I note that we are approaching 4:50 p.m. I

have one motion of a housekeeping nature I would like to put to the committee. Unless somebody objects, I propose to put that motion and then adjourn rather than start a new section. Is there any problem with that?

Mr. Ballinger: After your 36 years as a teacher, who am I to argue with you, sir?

Mr. Chairman: Thank you. We will start in at part V then tomorrow.

As far as this is concerned, I would like to read a motion and have someone put it so that I can expedite the preparations for handling Bill 119. As you know, Bill 170 and Bill 119 were handed to us on the last day of session, so we did not have time to establish a committee.

Up until that point in time, in this committee all we were doing was estimates. It is very helpful to have a subcommittee come up with a scheduling of the committee work, which is something I have done on other committees, so this is what this motion is about.

Mr. Faubert moves that the committee establish a subcommittee composed of one member of each party and the chairman, and that the chairman be given authority to call meetings to organize the committee schedule.

Mr. Wildman: The only proviso I would put on that, Mr. Chairman, is that I understand you have already had some discussions with Floyd Laughren, who is the individual for our caucus who would be carrying that bill. I do not think it will be a major problem, but he will have some difficulty in that he is the chairman of the standing committee on resources development, and the resources committee, as you know, is currently enmeshed in Bill 162.

Mr. Chairman: That is a helpful observation, because I did have a discussion with Floyd and I talked with Allan McLean about this possibility. These difficulties have been pointed out.

What I propose to do and what we usually did on the standing committee on the Ombudsman was that we had a person designated so that we realized the critic will usually be carrying the particular bill, but you have people you can talk to on a regular basis to get the ideas sorted out in case you want to advertise and things like that. That is the kind of thing we talked about here.

Floyd indicated we doubledeck it on Thursday afternoon. If we have hearings, which is what I am primarily concerned about, you have to make arrangements, and I do not want to—

Mr. Wildman: I am sure he can arrange to have someone chair his committee, if necessary.

Mr. Chairman: We have the motion on the floor moved by Mr. Faubert. Those in favour?

Motion agreed to.

Mr. Chairman: We are adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4:49 p.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

WEDNESDAY, APRIL 19, 1989

Morning Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)

VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)

Bryden, Marion (Beaches-Woodbine NDP)

Callahan, Robert V. (Brampton South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cordiano, Joseph (Lawrence L)

Cureatz, Sam L. (Durham East PC)

Fleet, David (High Park-Swansea L)

McLean, Allan K. (Simcoe East PC)

Ruprecht, Tony (Parkdale L)

Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden

Johnson, Jack (Wellington PC) for Mr. Cureatz

Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section

Searle, D. G., Solicitor, Legal Services Branch

Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section

Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, April 19, 1989

The committee met at 10:08 a.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Mr. Chairman: The chairman recognizes a quorum. Continuing our clause-by-clause of Bill 170, we are beginning, as we indicated at the close of business yesterday, with part V entitled "Aggregate Permits."

A word of caution before we start: In assessing what we are doing from this point on, the proposed amendments are fairly far apart, so if I get going too fast on the subsection analysis, just interject at any time you feel you want to. I am going to assume that we will be carrying the sections to which I have not received notice of an amendment. I will try not to go too quickly.

Section 34:

Mr. Chairman: We are beginning with clause 34(1)(a). May I assume it carries?

Mr. Wildman: Just a moment, Mr. Chairman. I have a question. Perhaps the parliamentary assistant or the officials can explain the purpose of aggregate permits generally.

Mr. Chairman: There is a question being put to you, Mr. Ballinger.

Mr. Ballinger: I am sorry. We wanted to get off gravel; we wanted to talk about—

Mr. Chairman: I understand you are distracted by somebody far more gracious than the questioner, but—

Mr. Ballinger: I beg your forgiveness.

Mr. Wildman: I was just wondering if you could give us an explanation of the purpose of aggregate permits generally.

Mr. Ballinger: Sure. I can give you a dissertation, but maybe Mr. Scott should give you the technical explanation.

Mr. Scott: Aggregate permits are to deal with crown land aggregate resources, so they deal basically with land above water on crown land anywhere in the province. They deal with land under water. It can include private land but it is very rare that there is private land under the Great Lakes or under the rivers in Ontario, so even though it does cover it, it is more for completeness than for actual circumstances we run into.

If it is crown land, we are trying to dispose of a crown asset as well



as control how it operates and the rehabilitation of the properties, so it is a dual function in essence. It is a disposition mechanism as well as a control and rehabilitation mechanism.

Mr. Wildman: This may sound naïve, but why do you not just follow the same approach as under the licensing provisions?

Mr. Scott: Part of it has to do with the fact that it is the disposition mechanism and the other part is that it is a short-term allowance. With crown land, we do not want to tie up the rights to those pieces of land to someone for a long period of time, and we want to have the flexibility to either increase or decrease the area that is allowable for that particular individual at any given time. Usually, they are one year in duration, and they can be up to five years if we feel that is warranted, and they can be renewed.

Mr. Wildman: Then why not handle it under the wayside section?

Mr. Scott: Waysides pertain to private land operations and we are trying to keep the two different processes separate, because there is quite a distinction between how they operate in northern Ontario and how waysides are intended to operate. Waysides are just for a public road authority project. They are for a very short duration whereas an aggregate permit, even though it has a life of anywhere from one to five years, can be renewed.

Someone in the construction business could, in essence, continue to operate on that same hunk of land for 20 years with constant renewals. For all intents and purposes, as long as he keeps in good stead with us and pays the fee that is due to us for the crown asset he is acquiring, then he would be able to operate there just as if it were his own land, as long as he met all the conditions and terms we would set down.

Mr. Wildman: Mr. Chairman, perhaps you would permit a question in relation to fees. I know this is dealt with in section 37, but how do the fees currently, or as you anticipate in the regulations, compare with the fees that an individual who owns private land and is operating in a municipality would be paying?

Mr. Scott: If we are talking about the licence fee, which is the upfront fee, it will vary depending on the type of operation. We have a fairly complex fee structure and we did get some comments back from the interest groups, because we circulated a sheet of different fees at the time the act was being circulated. We felt a lot of people would be interested in that, and indeed they were. We feel we may have been a little bit too complex. We are trying to treat everybody as fairly as possible. The kind of comment we got back was: "What is the difference between \$100 and \$200? Why not make everything \$200?"

Mr. Wildman: That is how the Treasurer (Mr. Nixon) operates when he is talking about taxes.

Mr. Chairman: You do not have to reply to that comment.

Mr. Scott: At any rate, what we are faced with now is that we are going to be reviewing that in light of the comments from the interest groups, and we are going to be going back and discussing some of these issues with the Ontario Forest Industries Association, with the Aggregate Producers Association of Ontario and with some of the other interest groups such as the Association of Municipalities of Ontario, especially the ones that pertain to

certain segments of rural Ontario, showing them what we have been receiving from them and other interest groups and giving them some ideas as to how we might modify that slightly.

We still think there should be some variations. For example, for a forest company that is going to have a large number of pits scattered along forest access roads, what we proposed was a \$2,000 fee for that type of operation and a \$100 fee for a normal, small commercial-type pit operation on crown land. We think that is still an appropriate approach, but we did have some other variables in there where, in some cases, it would go up to \$200 if it was in certain areas.

Mr. Wildman: It does not relate to the amount of aggregate to be taken out?

Mr. Scott: No.

Mr. Wildman: Then there is no royalty in that?

Mr. Scott: No, there is a separate thing for that. The royalty is separate. We are proposing 25 cents a metric tonne at the present time. That is slightly more than we are charging today but it is basically very similar. As time goes on, we can raise that if the economy and circumstances dictate that it should be higher.

Mr. Wildman: On occasion, do forest companies that are building roads under forest management agreements, or whatever, get the royalty forgiven? In other words, do they get the gravel for nothing?

Mr. Scott: At the present time they do.

Mr. Wildman: Do you intend to continue that under the regulation?

Mr. Scott: Our intent at the present time is basically still up in the air, but the approach we have been taking is that if it is a crown asset and if it is a valuable resource, whoever is getting the use of that resource should be paying the crown for that resource. That is the approach we are taking in our analysis of where we should be going.

If you are giving something away, normally people do not really appreciate it. They do not appreciate the value of it and the conservation ethic that should go with that particular resource. We feel that by having a fee associated with it, there will be an appropriate amount of revenue coming in and appropriate payment from whoever is making use of it, and that it will be recognized as something they have to plan appropriately for and will not waste.

Mr. Wildman: In terms of the forest resources company, though, it is essentially just a bookkeeping situation because in most cases under FMAs, they are paid by the government to build the roads.

Mr. Scott: That could be the case with forest access roads. However, it is also a crown asset that is being disposed of. This is a difficult argument to make and both sides have very polarized views on it.

If you are taking the gravel out of a pit and spreading it all over the place along these roads, many of these roads are there for only a couple of years and then they are abandoned. There is no way you can go back and



retrieve that resource again. It was used to make it possible to take the forest timber off the land, but it is not necessarily going to be of very much use for the next 50 years until they go back and timber that area again. I dare say that by the time that rolls around, that road will not be of any use to anyone and they probably will not even be looking at the same area for the road.

From that standpoint, I believe that it is good planning to have a fee associated with it and that the resource be maintained as much as possible in a form that is going to allow it to be used in the future if we are going to continue to have it available for other uses later on.

1020

Mr. Wildman: I will not prolong this. That does open up a major concern in that in the north, if royalties are forgiven, the general public often then takes the position that this road is being built with public money, and that therefore it should be a public road. It leads to all kinds of controversies over who should be allowed to use a forest access road, whether it should be just the forest company or whether it should be the hunter or the fisherman or whoever, if it was a road built with taxpayers' money or taxpayers' resources.

Mr. Scott: Because it is a crown property to start with, the crown can still make those kinds of determinations.

Mr. Wildman: It is not easy, though.

Mr. Scott: In our discussions with the forest industries association, we originally thought, because of our staff in the north, that we would be getting that type of response. We have had a fair number of discussions with them and we have ongoing phone conversations with the executive members as to where we are going through the committee and everything else.

They basically have not been as concerned about that as we once thought they were going to be. They recognize that times have changed and that we are moving into a slightly different era. There will indeed be some smaller companies that may have some concerns, but the larger companies, the larger industry organizations, do not seem to have that concern today compared to what we thought they would have.

Mr. Wildman: Their land use planners do, though.

Mr. Chairman: Mr. Johnson? You caught my eye a few minutes ago.

Mr. J. M. Johnson: Yes. Just a short question for clarification: In clause 34(1)(b) and clause 34(1)(d) you refer to land under water. That has no bearing at all on mining below the water level.

Mr. Scott: No, it does not.

Mr. J. M. Johnson: Okay.

Mr. Scott: It is basically in the Great Lakes or in the rivers; natural water.

Mr. J. M. Johnson: Yes. Thank you.

Mr. Chairman: Is there any other preliminary comment or question anybody would like to make of a general nature like these ones have been? Okay. Back to the task at hand then.

We were addressing clause 34(1)(a). Carried. Clause 34(1)(b)? Carried. Clause 34(1)(c)? Carried. Clause 34(1)(d)? Carried.

Subsection 34(2)? Carried. Subsection 34(3)? Carried. Subsection 34(4)? Carried.

Mr. Wildman: Could I ask a question in regard to subsection 34(5)?

Mr. Chairman: Yes.

Mr. Wildman: You described what a permit was for and I asked about licensing. Could you explain what the purpose of these three clauses (a), (b) and (c) are, particularly (c)? Why would the minister direct a person in writing to apply for a licence if in fact it is on crown land and so on? Why would you require this person to have a licence instead of a permit?

Mr. Scott: This subsection 5, in its entirety, is meant to apply to situations where the surface rights are partially crown land and partially private land.

Mr. Wildman: You might have some situations where there is an old mining claim, for instance, so it was patent land.

Mr. Scott: Yes. As far as we are aware, this pertains in large extent to eastern Ontario. Some of the earliest mining in Ontario occurred over there and the land tenure system and circumstances are quite complex in that particular area.

From that standpoint, we know of some properties where we could end up with a small hunk of crown land in the middle of a larger chunk that is going to be under licence. We wanted to make sure that the whole area was under licence and that we did not have a field in the middle of the whole thing which was not part of the licence and that it was being dealt with through an aggregate permit as if it were crown land in northern Ontario.

Mr. Wildman: Okay.

Mr. Scott: There may be some areas in northern Ontario that are like this too.

Mr. Wildman: Yes, there are. I wonder if clause 34(5)(a) refers to section 5, which I understand we have stood down.

Mr. Scott: I think it does.

Mr. Chairman: It does, so I do not know: Can we proceed with this now or what?

Mr. Yurkow: The motion Mr. Wildman has left on the table does not preclude clause (a).

Mr. Wildman: No, it does not.



Mr. Yurkow: They can coexist.

Mrs. Grier: Regardless of what section 5 says?

Mr. Chairman: That is my interpretation.

Mr. Wildman: Could I ask a question about clause 34(5)(a)? Are you saying that even if it is crown land in an area of the province that has been designated under the act, they will require a licence?

Mr. Scott: If it meets all these requirements. All three of these requirements have to be met at the same time.

Mr. Wildman: So (a), (b) and (c) go together?

Mr. Scott: Yes.

Mr. Wildman: Okay, so it is possible that a developer would not need a licence if one of the three did not apply?

Mr. Scott: That is right.

Mr. Wildman: Okay, I have an amendment that I want to add.

Mr. Chairman: There is a proposed amendment that a clause (d) be added. Is that what you are referring to?

Mr. Wildman: Yes.

Mr. Chairman: We may have to change the wording slightly because of that. At this point, though, I think we could address clause 34(5)(a). Carried. Clause 34(5)(b)? Carried. Clause 34(5)(c)? Carried.

Would you like to put your amendment now?

Mr. Wildman: I have to change the wording somehow.

Mr. Chairman: Is it your intention to have clause 34(5)(d) all inclusive, like the other three, because the "and" at the end of (b) makes it (a), (b) and (c)?

Mr. Wildman: My colleague points out that it really should be (aa); in other words, what we are attempting to do is expand clause 34(5)(a).

Mrs. Grier: It should almost be an "or": "The site is in a part of Ontario designated under section 5 or is within the area of the Niagara Escarpment plan."

Mr. Chairman: Would you be receptive to Mr. Wildman in reading his motion to change it from being clause (5)(d) to clause (5)(aa), which would allow us to go back and insert it where he wishes?

Mr. Yurkow: If I may make a comment, if it is proposed to make it as an alternative to the current (a) then I would suggest that Mr. Wildman move that this phrase be added to the end of clause 34(5)(a), preceded with an "or".

Mr. Wildman: With an "or". Okay, I agree that makes sense. Could we agree to reopen clause 34(5)(a)? Is that acceptable?

Mr. Chairman: Is there a consensus to reopen (a)?

Agreed to.

Mr. Chairman: Mr. Wildman moves that subsection 34(5) of the bill be amended by adding after the words "section 5" in clause (a) the words "or the site is within the area of the Niagara Escarpment plan."

Mr. Wildman: The purpose is to add to this section the Niagara Escarpment area. In other words, if an area is designated under the bill or is in the Niagara Escarpment plan, the minister could require a licence. I do not know if there are any areas of the Niagara Escarpment that are currently in areas that are not designated.

Mr. Scott: You are right. There are not any.

Mr. Wildman: There are not any? In that case, I withdraw.

Mrs. Grier: Are you sure of that?

Mr. Scott: Yes, I am positive.

Mr. Chairman: That was easy.

Mr. McLean: There is no possibility that there could be in the future?

Mr. Scott: I do not have any intentions to undesignate it.

Mr. Chairman: With the amendment withdrawn, could we have section 34, in its entirety—I do not believe there are any amendments—carry?

Section 34 agreed to.

1030

Section 35:

Mr. Chairman: Subsection 35(1)? Carried. Subsection 35(2)? Carried. Subsection 35(3)? Agreed. Subsection 35(4)? Carried. Shall section 35 in its entirety carry?

Section 35 agreed to.

Section 36:

Mr. Chairman: Subsection 36(1)?

Mr. Ballinger: There is a government amendment.

Mr. Chairman: I am sorry, I missed clause 36(1)(c). Clause 36(1)(a)? Carried. Clause 36(1)(b)? Carried.

Now are you going to act on the—

Mr. Ballinger: Yes, I am. I have an amendment, and for the benefit of the members, it was the one that was circulated on the first day, on the addendum. There were about seven or eight of them.



Mr. Chairman: Mr. Ballinger moves that subsection 36(1) of the bill be amended by adding the following clause:

"(c) where applicable, information on any aquatic biological resources that may be affected by the operation of the pit or quarry and measures proposed to minimize impacts on and to restore aquatic biological habitat on the site."

Mrs. Grier: What vision.

Mr. Wildman: This is very similar to an amendment we were going to put, only we were going to put it in subsection 36(3).

Mr. Ballinger: For the record, I want to reiterate our thanks to Mr. Wildman for his advance in the amendments to give us an opportunity to review and to respond.

Mr. Wildman: I just have one question, and this has come up in my thinking since we had legislative counsel write up these amendments. I do not know and I am not trying to throw a curve into this, but I wonder if it would be better, instead of "biological resources," to say "ecosystems." I am not splitting hairs here. It seems to me the word "ecosystem" is more encompassing than "biological resources."

Mrs. Grier: And I think more capable of general interpretation.

Mr. Wildman: I am not heavy on it. I just wonder if that might be better.

Mr. Ballinger: I would certainly want to defer to the staff. From a technical and legal point of view, I cannot respond to that.

Mr. Scott: Our concern is that we did have some biologists give us this wording. They created it for us and they felt that this was the most appropriate wording to meet the requirement that we were trying to address. From that standpoint, I have a little bit of concern about making a change at this stage.

We did talk about broader terms, or more general terms such as ecosystem, and what we were trying to address, and I believe what the biologists we were talking to were trying to address was the biological impact and the biological circumstance for the spawning beds and so forth on the bed of rivers such as the St. Marys River at Sault Ste. Marie and the Niagara River down on Lake Ontario, where two of the key areas are that we presently have these types of permits.

From that standpoint I still feel more comfortable sticking with what they recommended to us at that point in time rather than making a change where I am not sure whether it is a benefit or a potential problem associated with their concerns.

Mr. Wildman: The wording as it is now in the government amendment, and as it was in ours, was proposed by the land reclamation people who appeared before our committee, and I think it is acceptable. It is just that when I was reconsidering these, I talked to some biologists and they said that the word "ecosystems" is more encompassing. If you prefer to go with the present wording, that is fine with me.

Mr. Chairman: Do you wish to comment?

Mr. Yurkow: Not on the ecosystem. I am not a biologist. That is completely out of my field. I would suggest that if you are moving the amendment, you make it clause (aa) rather than (c), adjust the wording. The current (b), "such additional information," is a catch-all clause.

Mr. Wildman: So it should come before the "additional information"?

Mr. Yurkow: Yes.

Mr. Ballinger: I will so move then, for clarification.

Mr. Fleet: I take it the word "and" will shift down then as well, from 36(1)(a) to the end of what the new amendment is?

Clerk of the Committee: Yes.

Mr. Chairman: Is there any objection to that? Do we have a consensus of the committee to make those changes: that the section be labelled 36(1)(aa) and the "and" now at the end of 36(1)(a) shift down to the end of (aa)? Those in favour?

Motion agreed to.

Mr. Chairman: Shall subsection 36(1) carry as amended? Carried.  
Shall subsection 36(2) carry? Carried.

I have a notice that you wish to make an amendment with respect to subsection 36(3).

Mr. Wildman: We are not going to move an amendment. I just wanted to speak to it. Initially, we were going to move an amendment that it be struck out, but that is not the proper procedure. We are just voting against it.

Again, we are unhappy with this kind of provision in the act. It says, "The minister may waive the requirement for a site plan for an application for a personal aggregate permit." We have just gone through the whole process of talking about what kind of site plans are necessary. We agree that they are. Now we are saying that the minister, if he decides, may in fact use his discretion to say, "You do not have to go through this process." In our view, it is inappropriate.

What we are suggesting in terms of aggregate permit plans is not onerous. The provision gives the minister a kind of discretion to waive requirements which we do not think is necessary and is very unwise.

Mr. Ballinger: Again, I think maybe Mr. Scott can give some examples.

These ones are always tough. We are looking for some consistency in the flexibility. Dale, I wonder if you can just highlight examples whereby—

Mrs. Grier: Tell us about consistency in flexibility.

Mr. Ballinger: On short notice, it was the best phrase I could come up with.

Mr. Wildman: Consistently flexible.

Mr. Scott: I think I would like to answer the original question. The original question pertained to why we are putting this in there and what the logic is for it.



The key words are "for a personal aggregate permit." A personal aggregate permit is for an individual who is not going to sell the material. He is basically using it for his own household purpose. We have a very large number of people, either cottagers or local land owners, in northern Ontario who come to the crown and say: "I want to put a laneway into my property or I want to put a tile bed around my house"—or whatever—"and I need some gravel. I would like to buy some from the crown." It is usually in areas where there are no pits to speak of.

What we normally do is we have a pit or a couple of different pits in that particular area where we would let the public go in. We may give it to them free of charge. We may charge them. In the past, we have given it free of charge in many cases. In the future, we may charge them, or if it is only one pickup-truck load they want, we may give it to them free.

We do not want to require them, for basically a very small amount of gravel, to get a permit which allows them to take material for a long period of time. We want to get them in, get them out and tell them, "You are going to take it from this location." We will give them a sketch map of the property we have approved for that type of purpose and it will say: "This is where you get it from; take your pickup-truck load and that is the end of it." We do not want to be actually issuing another full-scale permit on a property where they can go in year after year or whatever.

1040

Mrs. Grier: Do you really think that people who want a small pickup-truck load of gravel and have land near a crown resource ask you and tell you?

Mr. Scott: We would like to think that they do.

Mr. J. M. Johnson: I support the thrust you are making. I wonder if it would clarify it if a personal aggregate permit was defined in section 1. Is there any place in the act where you do define what personal aggregate permit means?

Mr. Wildman: Subsection 35(4), sort of. It is not really a definition.

Mr. Scott: Yes.

Mr. J. M. Johnson: That sounds good.

Mr. Fleet: If I might raise a question, I was just speaking with legislative counsel and I have a little bit of a problem—I am not sure yet; I have not really quite resolved it in my own mind—with the use of the word "personal." The reason I raise that is that if you look in the definition section, it does not define the word "personal"; it defines the word "person" to include a public authority.

Quite clearly, we—I am assuming everybody here is taking the same view of this—do not really want a public authority or a corporation, for that matter, to fall under subsection 36(3). I am wondering whether it might be helpful, and legislative counsel might now make some suggestions about how, to clarify that. I appreciate it is in subsection 35(4) as well, and that is a bit of a help.

Mr. Yurkow: I think if you want to clarify that, it applies only to a living person.

Mr. Wildman: We do not want any dead people.

Mr. Yurkow: As opposed to a corporation.

Mr. Wildman: Dead people are only allowed to vote.

Mr. Ballinger: No, they are allowed one pickup-truck load. If you are alive, you get two.

Mr. Yurkow: I think we could change the wording to make it "an application by a person for an aggregate permit."

Mr. Fleet: We could leave the word "personal" in.

Mr. Yurkow: Actually, "by an individual for an aggregate permit."

Mr. Wildman: The problem with "person" is that a corporation is defined as a person.

Mr. Fleet: No, but if we use the word "individual."

Mrs. Grier: An individual.

Mr. Fleet: "An application by an individual." You might even want to say "a group of individuals," I take it, because you used "individual or group of individuals" in subsection 4.

Mr. Chairman: Would you like to read into the record exactly what that proposed amendment is?

Mr. Fleet moves that subsection 36(3) be amended by rewording it to read, "The minister may waive the requirement for a site plan for an application by an individual or a group of individuals for a personal aggregate permit."

Mr. Fleet: I think that covers it.

Mr. Wildman: This obviously would not apply to a group of individuals who are named Abitibi-Price.

Mr. Fleet: That is not a group of individuals; that is a corporation. If it makes you happier, it is only a legal fiction. You can keep reminding them of that.

Mr. Ballinger: Now that we have that read into the record, could I have a clarification? I am always nervous when amendments come from the floor without an opportunity to study them. Can we just have a second so that the ministry—

Mr. Chairman: Mr. McLean would like to ask a question too.

Mr. McLean: I certainly do not agree with "a group of individuals." You could have a group of cottagers who want to put a road into their subdivision. They could go together, their association, and get a whole lot of free gravel. I just do not agree with "a group of individuals."

Mr. Chairman: So you are making an amendment to the amendment?

Mr. McLean: I am not making any amendment. The original one is better than the last one that I observed.



Mrs. Grier: So what have we got at this point?

Mr. Chairman: We are at the point where we have been asked by the parliamentary assistant to get some clarification from Mr. Scott about the implications of all of this.

Mr. Scott: I have had some advice.

Mr. Ballinger: If we find ourselves in court the second day this thing comes into force, I will be looking for work.

Mr. Scott: I see what everybody—

Mr. Faubert: They can't fire you, Bill. It's in the act.

Mr. Chairman: Mr. Scott is speaking.

Mr. Scott: I see what everybody is concerned about. We did not twig to that because we were referring back to subsection 35(4). I am just wondering if, instead of putting the extra words in, we may be wise just to refer back as per subsection 35(4), because that is what it really pertains to.

Mrs. Grier: Except in your group of individuals.

Mr. Fleet: You are going to have the same result. I am happy to do it either way. I just want to make it clear that we are not saying a corporation or a public authority can come and do it. That is my concern.

Mr. Wildman: The thrust of subsection 35(4) is that it is not for sale and that it is not a commercial operation.

Mr. Scott: That is correct.

Mr. Wildman: The concern that is being raised here is what "personal" means. The idea Mr. Fleet was putting forward was that it should relate to an individual and I think he means "or a small group of individuals." I think he has a point. We are not just talking about whether or not it is a commercial operation; we are talking about whether or not it is indeed a private person.

Mr. Scott: I think that is covered because in subsection 35(4) it does say, "an individual or a group of individuals." Down in subsection 36(3) it says, "The minister may." That probably would not happen if it was a large cottage owners' group that wanted to make a large amount of use of that particular property for gravel.

Mrs. Grier: Mr. Fleet's suggestion that we put "individual" somewhere in subsection 36(3) narrows it even further than under subsection 35(4).

Mr. Fleet: Actually, it would be the same wording as in subsection 35(4) because 35(4) says "an individual or a group of individuals." It exactly matches 35(4) so that you have a reference that is clear. It is just to make clear you do not have somebody able to use subsection 36(3) to somehow expand. I am content to do it by reference—

Mr. Chairman: Could we have a final comment from the legislative counsel, please.

Mr. Yurkow: In taking another look at it in conjunction with subsection 35(4), I do not think we need to do anything. Subsection 35(4) sets out what a personal aggregate permit authorizes, and it authorizes only individuals to excavate. I do not think there is any need for additional clarification.

Mr. Wildman: Could I add one thing—two things actually. I agree with legislative counsel's interpretation, but I will say that aside from this, we are still opposed to subsection 36(3). Mr. Scott has said the minister would not likely agree to a large group of cottage owners building a road and maintaining their road with a personal aggregate permit, without a plan.

While I would in no way wish to cast aspersions on the current occupant of the office of Minister of Natural Resources, I do recall at least two occasions in the past where a Minister of Natural Resources, in one case, was found to be fishing in a fish sanctuary with a friend and was charged by a conservation officer, and on another occasion was found to go hunting in a so-called hunting reserve with a group of individuals who happened to be friends of his, completely in contravention—I will be careful—appearing to contravene the fish and game laws.

It seems to me that if we ever were to have another individual such as the person to whom I am referring in this position, he might in fact have a group of individual friends who might like to get some free gravel. That is why we do not like ministerial discretion.

Mr. Chairman: In the fullness of this discussion, Mr. Fleet, I believe legislative counsel recommends that the amendment be withdrawn. That would be my interpretation of that.

Mr. Fleet: I am content with that in light of the explanation. I think my concern has been taken care of.

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Mr. Chairman: You are in agreement with that? The other part of the conversation seems to indicate that the official opposition still opposes subsection 36(3). Is there any further discussion? Those in favour of subsection 36(3)? Those opposed? Carried. Clause 36(4)(a)? Carried. Clause 36(4)(b)? Carried.

Mr. Ballinger: Ready for my amendment, Mr. Chairman?

Mr. Chairman: Hang on for just a second. I was doublechecking a number. I put a suggested amendment in the wrong spot here, so I will relocate it.

Mr. Fleet: Mr. Chairman, I move that we carry clauses 36(4)(c) through to (g).

Mr. Chairman: Clauses 36(4)(c) through to (g)? Carried.

The next proposed amendment is a government one on clause 36(4)(h).



Mr. Ballinger moves that clause 36(4)(h) of the bill be struck out and the following substituted therefor:

"(h) location and size of existing and proposed stockpiles of overburden and soil and location and size of proposed aggregate stockpile areas."

Mr. Ballinger: It is simply a refinement with the other amendment, I think it was clause 8(1)(k).

Mr. Chairman: Those in favour of the amendment?

Motion agreed to.

Mr. Chairman: Clauses 36(4)(i), (j), (k) and (l)?

Mr. Wildman: Before we go ahead with that, I have not tabled any amendment to this, but in the past where we have come into this we have put in "existing and proposed."

Mrs. Grier: And "fences" too.

Mr. Wildman: And "fences."

Mr. Chairman: Mr. Ballinger, is there an explanation?

Mr. Ballinger: Yes. Mr. Scott, could you or even Mr. Masham bring us up to speed on the policy.

Mr. Wildman: In clause 36(4)(j) you have "existing and proposed entrances...and exits." Why do we not have it in clause (i) as well?

Mr. Scott: Sorry; I was just trying to catch up with you as to which one you are talking about.

Mr. Wildman: Clause (i).

Mr. Chairman: We are looking at an amendment to clause 36(4)(i). Exactly what do you want put in there?

Mr. Wildman: In the past, in other sections of the bill where we have had this, we put in "location of existing and proposed fences" as well as type. We have that same wording in clause (j) and we have it also in the new clause (h), so I am wondering why we do not have it in clause (i).

Mr. Scott: With aggregate permits, it is not necessary from the standpoint of—it is similar to a wayside permit in some respects, but it is different as well. It is different from a licence because it is not necessarily going to be there for ever until the resource is all gone. That particular company may only have a job there for some highway project where it is going to use crown land. We felt it was not necessary in this particular circumstance because we are asking for the location and type of fences. That could mean either existing or proposed.

Mr. Wildman: I will not make a big deal of it but your argument could apply to clause (j) as well.

Mr. Scott: Indeed it could. It is very rare on crown aggregate properties, as I am sure you are aware, to have fences to start with, because

on crown land we normally do not have fences. It was something we thought we would put in there, but we recognize that except around Sudbury we do not have any fences that we are aware of on crown land.

Mr. Wildman: We try to keep the people fenced in in Sudbury.

Mr. Chairman: Unless you have an amendment to propose, Mr. Wildman, I am going to call—

Mr. Wildman: No, that is fine. Go ahead.

Mr. Chairman: —clauses 36(4)(i), (j), (k) and (l), as they are outlined. Carried. Shall subsection 36(4), as amended, carry? Carried.

Clause 36(5)(a)? Carried. Clause 36(5)(b) carry? Carried.

I have a notice here from the NDP that in subsection 36(5), you might want to insert a clause (ba) after clause (b).

Mrs. Grier: We are prepared to discuss, I guess, whether (ba) is the most appropriate place, but our intent is to move an amendment.

Mr. Chairman: Mrs. Grier moves that subsection 36(5) of the bill be amended by adding thereto the following clause:

"(ba) an inventory and assessment of the quality and importance of aquatic biological resources."

Mrs. Grier: That is in line, I think, with the government amendment that included consideration of aquatic resources earlier. It seems that in this section, which explicitly deals with quarries or pits on land covered by water, it is appropriate to include the same sentence.

Mr. Ballinger: Mr. Scott, if you want to respond, please.

Mr. Scott: We agree. You could have covered it in either location. It was a toss-up. We felt, based on our legal advice, that by putting it upfront there it was probably a better location, but you are saying the same thing. As long as it is covered once in section 36, it does not have to be covered twice.

Mrs. Grier: It does not? I thought the difference here was that they would have to—

Mr. Scott: Maybe I can elaborate a little bit.

Mrs. Grier: Sure.

Mr. Scott: This is the site plan area you are talking about here. We do not necessarily think you can put this kind of information on a map as easily as you can maybe in a report. By having it upfront there, it says it has to be supplied. Whether you can put it on the site plan or whether it comes in as some kind of an assessment report—

Mrs. Grier: Okay; I agree.



Mr. Scott: —it can be done either way. That is the reason we chose to put it upfront; it seems to be more flexible.

Mrs. Grier: I agree.

Mr. Chairman: You are not putting the motion? You already read it in, so I guess you had better withdraw it.

Mrs. Grier: I will withdraw the motion with relation to subsection 36(5).

Mr. Chairman: Do clauses 36(5)(c) and 36(5)(d) carry? Carried. Do subsections 36(6), 36(7) and 36(8) carry? Carried.

Mr. Wildman: Wait a minute. We object for the same reasons that we put forward before.

Mr. Ballinger: Objection duly noted, Mr. Chairman.

Mr. Chairman: Do you wish to comment further, Mr. Wildman?

Mr. Wildman: No.

Mr. Chairman: Those in favour of subsection 36(8)? Opposed? Carried.

Does subsection 36(9) carry? Carried.

Section 36, as amended, agreed to.

Section 37:

Mr. Chairman: Do subsections 37(1), 37(2) and 37(3) carry? Carried. Does subsection 37(4) carry?

Clerk of the Committee: There is an amendment in there.

Mr. Chairman: It is not carried.

Mr. Wildman: Before we carry subsection 37(4), I have a question on 37(4) here; the government amendment is an addition to it. I do not quite understand. Could you explain the provision of the Mining Act that makes this section necessary.

Mr. Scott: I am going to ask an old miner from way back, Mr. Masham, our mining expert.

Mr. Masham: It is because there may be a mining claim, what is called a place deposit. Supposing there is gold in a sand and gravel deposit and that is being covered by a mining claim for the gold. Then the material, the sand and gravel, obviously has to be processed to extract the gold. So it is to avoid any conflict in that regard.

Mr. Wildman: That makes sense but the reason I raise this is that before, remember, when we were dealing with subsection 34(5), the explanation that was given was that particularly in eastern Ontario and in some parts of the north, there are old mining claims scattered around and you wanted to ensure that if it was on crown land, it was covered. Does that subsection

34(5) not deal with the concern you are raising in subsection 37(4), or am I missing something?

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Mr. Scott: It is different. Maybe I can try and elaborate. It is quite complex. What we are saying is that in the circumstance where a person is mining gold from basically an outwash placer type of deposit, which is where the river has eroded away the bedrock and the gold and sand and gravel are all mixed together, there is a legal problem in this act. If someone was doing that, he would legally be required to have both an aggregate permit as well as the right to the placer deposit through a mining lease or mining claim of one form or another. We did not want to require that double jeopardy, where they had to have two different approvals for the same thing. That is what we are trying to get around. It is slightly different than the part earlier on.

Mr. Wildman: Fine.

Mr. Chairman: Do you have something you want to add? Is there any further comment on subsection 37(4)? Is it carried? Carried.

Mr. Ballinger moves that section 37 of the bill be amended by adding the following subsection:

"(4a) An aggregate permit issued in respect of a pit or quarry located entirely or partly on land covered by water that is not the result of excavation below the water table shall contain such conditions as are considered necessary to minimize adverse impacts on or to restore aquatic biological habitat on the site."

Mr. Ballinger: Mr. Scott can give you examples and the reason for doing this.

Mr. Wildman: I would like to move an amendment to the amendment.

Mr. Chairman: Mr. Wildman moves that the amendment be further amended by changing the word "or" in the second-last line to "and."

Mr. Ballinger: Picky, picky.

Mr. Chairman: Do you have an objection to the amendment to the amendment?

Mr. Ballinger: We have no objection to tabling the amendment to the amendment; however, the staff is discussing with legal counsel the impact of the interpretation.

This is almost like Truth or Consequences.

Mr. Scott: We believe that the "or" should stay because it allows for the type of flexibilities; "and to restore aquatic habitat on the site" may be rather difficult if we are dealing with an area 60 feet below the water surface in the Great Lakes. Determining whether the fish want to go back into that area or not: I am just not sure how we are going to co-ordinate that effort. It gets a little bit touchy as to what we would really be doing and what we would mean.

Mr. Wildman: I will give you an example. Certainly, if you are



mining aggregate from the bottom of Lake Superior in Whitefish Bay, it might be required as a part of the permit that when the operation is finished the bottom of the bay you have been mining be returned to such a state that you could have a spawning bed.

Mr. Scott: That does cover that, and that is what this was all about in the first place. I do not think it requires "and" in there to do that.

Mr. Wildman: But by having "or" it means that you might in fact not do it.

Mr. Fleet: I just want to ask a question of Mr. Wildman. Maybe I am reading it wrong but I thought the word "restore" would suggest that you would go back to what you had before. If you have had some kind of excavation below, my understanding from the hearings and all the other comments we have heard is that sometimes you end up with a different arrangement.

When you have rehabilitation, you have brought it back to a use, but it may be somewhat different in the light of adjacent lands when it is above the water. Below the water, I suppose you might have a different aquatic situation, and the use of the word "restore," I thought, suggested you had exactly the same as you had before. That may not be the wisest thing to have. You might be better with something different.

Mr. Wildman: I think Mr. Fleet's argument could apply just as easily to the government amendment to clause 36(1)(c), where the government used "and." I am just bringing this amendment in line with the previous government amendment.

Mr. Fleet: Clause 36(1)(c) is quite different.

Mr. Wildman: It is the same words, "measures proposed to minimize impacts on and to restore aquatic biological habitat on the site." They are the same words.

Mr. Scott: The previous amendment was basically getting information that can be collected and so forth. This pertains to putting appropriate conditions on. When you are making that type of determination, we still believe that the "or" is appropriate and necessary because of the flexibility that you may have to have.

In terms of the St. Marys River, for example, or the Niagara River, once you have mined some material there, it keeps filling back in because the river keeps bringing it down. We have found there is basically nothing we can do. If we throw some stones down there, they are going to be covered with other stones and sand that keeps coming in anyway.

It happens so quickly in those couple of circumstances in those two rivers that we would need the "or," because we may not have to do anything to restore it. It restores itself naturally because of the type of fluvial regime that exists there with the sediment movement. In other areas, we may have to do something and, indeed, our clause here would still cover all of those circumstances. That is my answer on that issue.

Mr. Wildman: It sounds to me as if you are trying to be consistently flexible again.

Mr. Ballinger: We want to reinforce that. There is consistency in flexibility.

Mr. Wildman: The problem is that when you say what you are saying with "or," when you put your "or" in subsection 37(4a), you are in a sense making what you are requiring in section 36 window-dressing.

Mr. Chairman: I think we probably have talked about the amendment to the amendment enough. Those in favour of the amendment to the amendment? Opposed?

Motion negatived.

Mr. Chairman: Is there further discussion or clarification needed with respect to the amendment? Subsection 37(4a)? Carried.

Subsection 37(5)?

Mr. Wildman: Wait a minute.

Mrs. Grier: We are opposed to subsection 37(5).

Mr. Wildman: We were on subsection 37(4). We are opposed to subsection 5 for the same reasons that have been reiterated before.

Mr. Chairman: I will call the vote again. Those in favour of subsection 37(5)? Opposed? It is carried. Subsection 37(6)? Carried. Subsection 37(7)? Carried.

Section 37, as amended, agreed to.

Section 38 agreed to.

Section 39:

Mr. Chairman: Subsection 39(1)? Carried. Subsection 39(2)? Carried. Shall section 39 in its entirety carry?

Section 39 agreed to.

Section 40 agreed to.

Section 41:

Mr. Chairman: Subsection 41(1)?

Mr. J. M. Johnson: Mr. Chairman, just for clarification, possibly it is under section 18, but it says, "Upon application...the minister may consent to the transfer of the commercial aggregate permit." Are the conditions set down to the original applicant carried forward to the next purchaser of the permit?

Mr. Scott: Yes, they would be.

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Mr. J. M. Johnson: I have a difficulty in the township of Erin. They have run into a problem with the transfer of a permit and the new owner does not want to abide by the conditions set down by the original.

Mr. Scott: Right.



Mr. J. M. Johnson: Does the minister have the power to enforce the original owner's transfer?

Mr. Scott: We do. We are talking about aggregate permits here and you are talking about licences on private land.

Mr. J. M. Johnson: Yes, I am sorry.

Mr. Scott: There is a difference, but we can carry those permit conditions over. The problem you are talking about is really a legal problem, because the agreement between the municipality and the licensee in that circumstance is faulted in law, as we understand it.

Mr. Ballinger: You are speaking now of the development agreement that they have with the municipality and the previous owner.

Mr. Scott: Yes. We have a problem with that, because the development agreement in essence does not carry the weight that it should carry and therefore any condition that we have referring to it is redundant. What we are going to have to do in properties like that—that may not be the only one, and we have that in mind when we do relicense those properties—is readdress that site, and we can put new conditions on the site to address those problems.

Mr. J. M. Johnson: There is not anything we are doing in Bill 170 that can address that problem?

Mr. Scott: There is not anything we are doing in this particular section that is going to affect that.

Mr. J. M. Johnson: But in any section in Bill 170?

Mr. Scott: We have dealt with that already. That pertains to the grandfathering in of the old Pits and Quarries Control Act licences into the new Aggregate Resources Act licences. When we do that, we will be re-establishing conditions on the individual properties, and that would be a good example, where we would indeed be looking at the circumstances of that property. The conditions may not be identical, because it would not make any sense putting conditions back on that have no force in law, so we will be looking at them and putting appropriate conditions on the property to address the concerns that the people have.

In that particular case, we will probably be having a meeting with the company and the municipality to inform everybody of how we figure we can best handle the concerns. I understand that at any rate they have been having meetings among themselves, trying to address it with a more appropriate truck-haul route and whatever else they have been talking about over the last couple of months. I left that discussion a couple of months ago and I do not know what has happened since then.

Mr. Ballinger: For the benefit of Mr. Johnson, I think one of the amendments that was proposed by us and has subsequently been adopted is that municipalities now have to be notified of the transfer of the licence 30 days in advance. This gives the municipalities an opportunity to respond back to the minister.

One of the problems before was that the minister could transfer that licence and then notify the municipality afterwards. Now any municipality that has a development agreement at least can notify the minister in advance within

that 30-day period to have regard for a development agreement that has already been signed by the municipality and the company. At least as I view it, coming from my municipality—and yours is somewhat similar—it is a mammoth step in the right direction on notification.

Mr. Chairman: I was partway through calling subsection 41(1). Shall it carry? Carried. Subsection 41(2)? Carried.

Section 41 agreed to.

Section 42:

Mr. Wildman: Just for the sake of clarity, should not the numbering in this section be different? After (c), after the word "if," should those three provisions not be in roman numerals: (i), (ii), (iii)?

Mr. Chairman: I would like the legal counsel to comment on that.

Mr. Yurkow: No, they are clauses. That is correctly numbered.

Mr. Wildman: Okay. The reason I asked is because (a), (b), (c) can be done if 1, 2 and 3 happen.

Mr. Yurkow: It is that (a), (b) or (c) can be done if (d), (e) or (f) pertain.

Mr. Wildman: Well, I do not care. Okay. We agree with this section.

Mr. Chairman: Shall clauses 42(a) through (f) carry? Carried.

Section 42 agreed to.

Section 43:

Mr. Chairman: Subsection 43(1)? Carried. I guess I should say clause 43(1)(a).

Mrs. Grier: Clauses 43(1)(a) through (e) agreed to.

Mr. Chairman: Through clause 43(1)(e)? Carried.

Mr. Ballinger: I have an amendment. The proposed amendment has the words "in effect." Being consistent with the previous discussion here in taking out the words "in effect," I am going to read it without those words. Since we have already resolved that in a previous amendment, I have been advised by legal counsel on my immediate left not to read into the record the words "in effect."

I move that subsection 43(1) of the bill be amended by adding thereto the following clause:

"(ea) attaches a condition to an aggregate permit issued under subsection 69(12) that adds, rescinds or varies a condition of the permit or licence it replaces."

It really is only a cross-reference.

Mr. Wildman: I may be reading too much into this, but when you say "ea" you are referring to the Environmental Assessment Act?



Mr. Ballinger: Oh, what a guy. Actually, I was thinking of your executive assistant.

Mrs. Grier: Which one? Agreed.

Mr. Wildman: Agreed.

Mr. Chairman: Mr. Ballinger, you did not read the "or" into the record. Do you mean the "or" to be there at the end of the (ea)?

Mr. Ballinger: I am reading out of my paged amendment, which does not have the word "or."

Mr. Sola: Page 31 has "or."

Mr. Chairman: Does it need an "or?" It does need an "or."

Mr. Ballinger: It needs an "or"? Are you satisfied with that, staff?

Mr. Scott: Most certainly.

Mr. Chairman: Those in favour of the amendment?

Motion agreed to.

Mr. Chairman: Clause 43(1)(f)? Carried. Shall subsection 43(1) in its entirety carry? Carried.

I believe there is a housekeeping amendment to subsection 43(2) by the government side.

Mr. Ballinger: Yes.

Mr. Chairman: Mr. Ballinger moves that subsection 43(2) of the bill be amended by striking out "or" in the first line and by inserting after "(c)" in the second line "or (ea)."

Motion agreed to.

Mr. Chairman: Shall subsection 43(2), as amended, carry? Carried. Subsection 43(3)? Carried. Subsection 43(4)? Carried.

Section 43, as amended, agreed to.

Section 44:

Mr. Chairman: Subsection 44(1)? Carried. Subsection 44(2)? Carried. Subsection 44(3)? Carried. Subsection 44(4)? Carried. Subsection 44(5)? Carried. Subsection 44(6)? Carried.

Section 44 agreed to.

Section 45:

Mr. Chairman: Clause 45(1)(a). Carried. Clause 45(1)(b)? Carried.

Subsection 45(2)? Carried. Subsection 45(3)? Carried. Subsection 45(4)? Carried.

Subsection 45(5)? We have amendments to subsection 45(5) and a subsection 45(6) to be added, I believe. I guess there was a subsection 45(6) in the original bill.

Clerk of the Committee: Section 46.

Mr. Chairman: Hold on. Whoa.

Clerk of the Committee: Section 46. It is the next one.

Mr. Chairman: I have been advised incorrectly by my clerk. It should be section 46. Shall subsection 45(5) carry? Carried.

Section 45 agreed to.

Section 46:

Mr. Chairman: Subsection 46(1)?

Mr. J. M. Johnson: I have a question about this. The way 46(1) reads to me is that royalties will be determined by the minister.

Mr. Ballinger: Yes.

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Mr. J. M. Johnson: Is this the royalty per tonne?

Mr. Ballinger: Yes.

Mr. J. M. Johnson: Will the minister determine the amount?

Mr. Ballinger: It will be established in the regulations.

Mr. J. M. Johnson: It says, "and, in determining the royalty, the minister shall have regard to the location, quantity, type and accessibility of the aggregate." Does that mean there will be different rates across the province?

Mr. Scott: That could be. It depends on the circumstance. We already do that for certain things. For building stone, we charge more than we do for aggregate. It depends on the economic value. If the man is going to be able to make a lot of profit from something, we do not think the crown should be giving it to him free. If he is getting amethyst, for example, it has a higher value, and so does building stone, than do sand and gravel. There is a fee associated with that, just as there is with any asset that we are disposing of.

Mr. J. M. Johnson: Can we deal, for example, with gravel? Would there be a different charge for gravel for an aggregate producer in one part of the province than there is in another for the same material?

Mr. Scott: There could be. I will give you an example.

Normally, there would not be, but if you use an urbanized area like Sudbury, for example, where the gravel is being mined on crown land and private land quite close to the city, and if the private land operator has to buy his land and he has to expend a fair bit of money in acquiring his property, why should we be giving away, at rock-bottom prices, crown aggregate



next door so that the man on crown land is operating at a distinct advantage over the man who has invested in his own private land?

Under that circumstance, I think it is reasonable that we should have a higher fee for that gravel, because the only one who would be benefiting would be the man who was lucky enough to find some crown land that had aggregate and he was able to compete—indeed, in some cases, we have heard concerns in the Sudbury area—unfairly and put the man who owns his own land at an economic disadvantage that may put him out of business. We feel that it is warranted in that type of circumstance to charge what we think the fair market value of the aggregate is in that urbanized area.

Mr. J. M. Johnson: I was possibly reading it the other way, that there could be some unfair advantage if there was a higher rate in one section than another. I would support the thrust that it be uniform across the province, that every aggregate operator would have the same benefit and not be penalized because of a higher level of charge in one area than in another. The point you make is on the opposite side. You want to keep it as uniform as possible as well.

Mr. Scott: We want to keep it as uniform as possible, but to keep it uniform where you are comparing basically apples and oranges, where you are comparing private land and crown land, you have to have the flexibility to charge a different rate for aggregate on crown land in the Sudbury area, for example, compared to what you would charge maybe in the Hearst area.

Mr. J. M. Johnson: Just for clarification, in the former proposal, there was a levy, I think, of four cents to the lower-tier municipality, one cent to the province, half a cent to the region.

Mr. Scott: Yes, that is for licensed properties.

Mr. J. M. Johnson: Is that still the thrust?

Mr. Scott: That is still the thrust, as best I understand it, that the government intends to take.

Mr. J. M. Johnson: I would like to see the municipalities receive something. At the present time, they do not.

Mr. Scott: That is correct.

Mr. J. M. Johnson: Under the proposed even six cents, they would at least receive four cents.

Mr. Scott: The lower tier would get four cents.

Mr. J. M. Johnson: But the ministry is going to make that determination, not the Legislature.

Mr. Scott: It would be through regulations.

Mr. Ballinger: Let me speak to that, if I might. We have had great discussions about this. It is felt by the minister and myself as well, coming from an aggregate-affected area, that it should be dealt with in the regulation so that it will provide the flexibility to be changed from time to time. One of the problems with including that in the legislation is that it becomes cast in stone, as you know, and there is a distinct advantage to having that flexibility in the regulations.

Mr. J. M. Johnson: I will accept that but I do want to speak on behalf of the municipalities. A lot of municipalities, if they were receiving something in return, could better satisfy the concerns of their ratepayers by being able to put some money back into the municipality and take care of the roads and bridges and the inconvenience. I feel if they are being penalized by having a pit operation, they should receive some benefit. If this is done, that would be satisfactory, regardless of whether it is by regulation or legislation.

Mr. Ballinger: You have our assurance it will be there, my friend.

Mr. J. M. Johnson: Okay.

Mr. McLean: I just want clarification and assurance, as the parliamentary assistant would say. In a municipality that has a lot of crown land and where the only pits are on crown land, and that municipality still has several roads to maintain, are you telling me that municipality will not get any revenue from that pit because it is owned by the crown?

Mr. Scott: Our intent is that if it is crown land, the royalty that we get, whether it is 25 cents or 30 cents or whatever, would be held by the crown. It would not go to the municipality.

Mr. McLean: Then you are treating that municipality unfairly. They still have to maintain their roads as any other municipality does.

Mr. Scott: There is very little aggregate being removed from crown land that is going anywhere other than for local use. If we were to put that fee on there, basically we would be penalizing the municipality because we would be taking more money from it than by doing it the way we are presently doing it. They would be paying six cents a tonne plus eight cents a tonne. At the present time, they are not paying any of that when it is crown land. The only one that would benefit would be the province.

Mr. Wildman: I imagine the Ministry of Transportation would be paying two thirds of it.

Mr. Scott: Yes, through transfers and so forth, but at the present time, they get transfers from MTO anyway. Basically, the only one you are going to be helping is that more money will be coming back to the province from the townships.

Mr. McLean: But that municipality is not getting the benefit.

Mr. Scott: They are going to get the benefit because we are not going to be requiring them to make that payment in the first place.

Mr. McLean: I know of municipalities with about 300 or 400 people in them and very small revenues. There is a lot of county road and there is a lot of gravel road. It is the township of Matchedash. If you want to look it up, it is there.

Mr. Wildman: No, I was not questioning it. I was just pointing out that I have a township, the township of Thompson, which has 60 people.

Mr. McLean: So we do have them.



Mr. Scott: But in that particular area, there is probably very little crown land that is being used for mining. Correct?

Mr. McLean: The only pits are on crown land.

Mr. Scott: Okay. I was not aware there were any pits on crown land in that area, unless —

Mr. McLean: It may be a small pit. It is just a point I wanted to make. There are probably others. I am sure there would be. All I want is them treated the same as anybody else, whether it is crown land or not.

Mr. Chairman: Are we finished with that one?

Mr. Ballinger: Sure are.

Mr. Chairman: Subsection 46(1)? Carried. Subsection 46(2)? Carried. Subsection 46(3)? Carried. Subsection 46(4)? Carried.

I have notice of an amendment to subsections 46(5) and 46(6).

Mr. Ballinger: This really is a clarification.

Mr. Chairman: Mr. Ballinger moves that subsections 46(5) and (6) of the bill be struck out and the following substituted therefor:

"Exemption from royalty payment

"(5) No royalty is payable by an aggregate permittee,

"(a) who is exempted from payment by the minister; or

"(b) who belongs to a class of permittees exempted from payment by the regulations."

Mr. Wildman: I note that in the original draft of the bill it just said that the minister may waive the royalty. I wonder if you could explain the significance of adding clauses 46(5)(a) and (b) to that. Basically, if you read (a) it means the same thing as what it said in the first draft, that the minister may waive the royalty.

Mr. Scott: Previously, we did indeed have what you say, but it also had the thing in there about the crown being exempt, or agents or contractors or so forth of the crown. After we reviewed that, there are so many agents and contractors and everything else of the crown that we became leery of that because it might, by legislation, have exempted anyone who was working for the crown on any project. We did not want to necessarily make it that broad, because we want Ontario Hydro to pay, for example, and we want—

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Mr. Wildman: A contractor building a provincial highway.

Mr. Scott: We want to be able to exempt provincial highway contractors as a class, rather than by waiving everything here because there are various circumstantial situations that might come along where we have

concern about that type of broad waiving. By putting it in this manner, we felt we were allowing for the flexibility we need as circumstances change.

Mr. Wildman: Could you explain? Since as a legislator here I am attempting to protect the taxpayers and I am particularly concerned about protecting Her Majesty and making sure that she gets the royalties she deserves, I wonder if you could explain what kind of class of permittee. You have already indicated that the contractor working on the Queen's highway may in fact be exempted, I suppose, because he is building a road for the Queen.

Mr. Scott: That is right.

Mr. Wildman: There is no reason for the Queen to charge him money for her aggregate, but I wonder if you could explain what other classes might be exempt.

Mr. Scott: That was the only class we were trying to cover in the first instance. Because there was a broader definition given to the wording that we had in the act originally, that is, different people interpreting it, they interpreted it to mean something broader than what we initially intended. We felt that by doing it this way, our intent would be to basically exempt only Ministry of Transportation projects of a provincial highway where the crown had called a contract tender for that particular job. Anything else would be required to pay a royalty unless the minister personally waived it.

Mr. Wildman: So that last "unless" you put in there would apply, then, to a pulp and paper company or a lumber company or a logging operation that had a forest management agreement and was building a forest access road. In most cases, would the minister waive the royalty in that situation?

Mr. Scott: The minister would have to personally waive that royalty.

Mr. Chairman: Is there any further comment with respect to the amendment?

Motion agreed to.

Mr. Chairman: Shall subsection 46(7) carry?

Mr. Fleet: I suspect there has to be an amendment to subsection 46(7). It should say, "subsections (1) to (5)" and I suspect the original bill said subsections 1 to 6.

Mr. Chairman: Mr. Fleet has pointed out that there has been a change, because of this amendment, in subsection 46(7). I think it is noted in the printed copy we are going by.

Mr. Fleet: Yes. It says subsection 5 in the printed copy, but it is also underlined, which is why I think it said subsection 6 originally.

Mr. Chairman: My understanding is that the renumbering just follows as a matter of course.

Mr. Fleet: In other places, we were stopping to do that with the motions.

Mr. Chairman: This is fine.



Clerk of the Committee: In the original bill, it is "subsections (1) to (6)."

Mr. Fleet: Right. So just to be clear, I move that we amend—

Mr. Chairman: Shall subsection 46(7), as amended, carry? Carried.

Mr. Fleet: Wonderful. Thank you.

Section 46, as amended, agreed to.

Mr. Chairman: We are beginning Part VI, titled "Rehabilitation."

Section 47:

Mrs. Grier: I do not intend to support this section. Let me start by saying that I would like to have some explanation. It is interesting that in almost all of the submissions from interest groups concerned about the environment, the recommendation to the committee was that this section be deleted.

I appreciate that we made an amendment back in section 37 to make some mention of land under water and aquatic and biological resources, but I would like to hear from the parliamentary assistant or Mr. Scott some rationale for why this exemption or loophole, as it has been called by many, is included in the legislation.

Mr. Scott: This is covered by the amendments we made to sections 36 and 37. We feel it is better there than in section 47. In section 47 we require this type of exemption because if we did not have it here; all the things that pertain above water table, on land, would have to be addressed—inspections under water, sloping the land to certain grades, putting topsoil down, seeding it and everything else—and that does not really pertain under the Great Lakes. It is a means of addressing that type of legal problem where we have to rectify that to make it nonpertaining under those circumstances.

Mr. J. M. Johnson: This is a question of clarification on this point. Are we talking about pits that have been excavated below the water table or just under water?

Mr. Scott: Under water, natural lakes.

Mr. J. M. Johnson: Yes.

Mr. Wildman: The section says "that is not the result of excavation of aggregate below the water table."

Mr. Chairman: Mrs. Grier, I believe you were asking a question.

Mrs. Grier: My difficulty is that this whole section is on rehabilitation and I think it is a real advantage to have in the legislation a section that specifically speaks to rehabilitation. While I recognize the subsection 37(4a) we have added deals with the conditions that would be applied to a permit for land covered by water, I still think the fact you sort of explicitly spell out here an exemption sends the wrong message and the wrong signal. If we are talking about rehabilitation and it is the intent that every pit and quarry be rehabilitated, perhaps there is some wording or caveat

that could be put into section 47. To me, just the blanket exemption is not the way to do it.

Mr. Fleet: Can I ask a question about that? I am not quite clear. I asked Mr. Scott about this before. I inquired. I was bothered by it. The phrasing Mrs. Grier is now using is that she is talking about an exemption. I understood the explanation you just gave a moment ago to be about a legal nonapplicability, there being a difference. The act is not intended to apply under a natural lake. Are we talking about the same thing, Mrs. Grier? Do you understand it to mean something different? That is what I am worried about, because I did not read this as saying there is an exemption, rather that there are different legal problems under a lake.

Mrs. Grier: I mean the definition of pit and quarry is an area from which aggregates are removed. There are some of those areas that are below the surface of an actual lake. It may well be that the lake does not look the same after the aggregate has been removed as it did before the aggregate was removed, and the requirement for rehabilitation is deleted or excluded by this section.

Mr. Fleet: Maybe I should ask a practical question. Is there a lake in Ontario that is a natural lake under which there is a pit or quarry?

Mr. Scott: Yes.

Mr. Fleet: How do we regulate those now?

Mr. Scott: We have about 20 different operations of this nature in the province. Most of them are in the Parry Sound area. There are a couple up in St. Marys River. There is one in the Niagara River. I think there is another one in Lake Erie and there is one up on the Ottawa River. These are basically under the Beach Protection Act at the present time and they are dredging operations where you have a barge or a ship that has a suction or a clam type of dredging mechanism.

They take the material out under this permit. We are proposing that each one of these will basically have its own little cookbook type of conditions and special requirements for how you rehabilitate them and how you manage them, because each of them is so different. Some of them are in rivers where the sediment moves in equally as fast as you take it out. In other cases, they are different. They may be a sandbar out in Georgian Bay that is being dredged up to make cottages on some of the islands.

Each circumstance is so different. In some cases, we go and circulate all the information. If you are on the Great Lakes, in the International Joint Commission area, such as the St. Marys River or the Niagara River, you could have as many as 19 different agencies, a couple of different levels of government, two different countries and so forth that you are dealing with. By the time you are finished, you have such a detailed assessment of what you can do and what you cannot do and what concerns might be there that the act has to have this type of flexibility.

That is why we put it in sections 36 and 37, where all that would be dealt with, rather than dealing with it under rehabilitation, which does not really pertain, because it is basically above-water rehabilitation that section is written for. To try to get over the legal problem of having all this pertain when it does not make any sense when you are dealing with



underwater, we had to put that legal clause in there so that it is dealt with in a different manner.

We do not really issue very many of these. If someone comes in and wants one of these types of permits, he is going to have to do a lot of detailed assessment and detailed study, in many cases, with biologists and everyone else who has any specialty in that particular area involved. That is why we feel it does not pertain in this particular area.

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Mrs. Grier: The facts are clear.

Mr. Fleet: If I could just continue with my question—I am sorry to interrupt, Mrs. Grier—you made reference to other legislation you currently use to deal with the rehabilitation situation. Can you just expand a little as to what your powers are currently and confirm those are not going to be affected in any negative way by this legislation? I do not think they are, but I just want to hear it again.

Mr. Scott: This legislation will be deleting the Beach Protection Act, and in so doing we have to cover those same kinds of properties with this legislation, but it is not going to overrule the Canada Fisheries Act or the Beds of Navigable Waters Act or any of those other pieces of legislation that also pertain to circumstances where you are mining or where you are doing anything in a natural water body. There is also the Lakes and Rivers Improvement Act that pertains.

Mr. Wildman: Except it is almost impossible.

Mr. Scott: It may be in certain circumstances, I am not sure, but I have been involved with it.

Mr. Wildman: It is a very old act.

Mr. Scott: It is a very old act but I was involved with it myself a few years ago when I was in the field, and we had relatively good success in stopping certain actions that we were not in favour of under that legislation. We were relatively successful in appeals to the mining and lands commissioners with whom I was involved with that act.

All those pieces of legislation are integrated into the decision-making power that we have under this act for mining under the Great Lakes.

Mrs. Grier: Does the Beach Protection Act currently contain anything dealing with rehabilitation?

Mr. Scott: No, it does not.

Mrs. Grier: To go back to what you said earlier, the very fact that there are 19 government agencies involved in approvals for quarrying under water is, in my mind, in the Great Lakes even more reason to be very explicit that if rehabilitation is required, this is something we feel needs to be highlighted.

I would feel more confident of your argument that we have covered ourselves by your amendment to subsection 37(4) if the government had been prepared to accept our "and" instead of "or" in subsection 37(4a). In the

absence of 37(4a) saying "shall contain such conditions as are considered necessary to minimize adverse impacts and to restore aquatic biological habitat," I do not agree with you that rehabilitation is explicitly spoken to in 37(4a) as it now stands.

Mr. Scott: I guess my comment on that is that these various agencies, and they may not in all cases be as many as 19, but in those circumstances these agencies have legislative or policy or approving authority of one form or another with whatever agency they pertain to. We cannot just say we do not agree with them and throw those comments in the garbage. They may have quite legitimate and quite legally binding concerns that we have to address, and so anything we are doing in terms of approving these types of permits on these properties under lakes would be, as far as I am aware, very accurately and in a very detailed way covered under these permits through the conditions and the approval process.

Mrs. Grier: But surely if the approval process—why then have a section under rehabilitation in the legislation at all? In your own licensing and permit approval and everything we have spoken to in the earlier parts of the act, you could make the same argument that your conditions will necessarily include rehabilitation. Because rehabilitation is one of the whole rationales for this legislation, is the thrust behind it and is something that has been claimed by the government as being the advantage of this legislation, have a separate section on rehabilitation.

It is not good enough to say, "That will be dealt with in the permit approval process." You could make the same argument about any clause, and none of the various agencies or conditions that they can impose upon an application under water have got any consideration of rehabilitation, because their mandate is not quarrying or pits or something that is going to require rehabilitation.

Mr. Scott: This is not really rehabilitation in the same sense when you are talking about dredging under water, because you are not really creating a big pit. You are sucking up or clamming up some material from the surface. It may only be a couple of feet in depth—

Mrs. Grier: It may affect the level of the water or the condition of the shoreline or the fish habitat.

Mr. Scott: —and as such, those are the types of concerns that are addressed up front, as to whether the material was going to be brought back in by natural processes through the sediment movement on the bed of the river.

We have 2,700 licensed properties at the present time, which we felt was justification to create a special section which pertains to the rehabilitation of above-water table types of operations, and that is basically what part VI pertains to.

These other properties under the Great Lakes are a very special case. We felt that the best way to handle those was through these special conditions, special approvals as to how you do it, how many tonnes you take, what type of monitoring may be required and all the different concerns that are addressed by the various agencies. We felt that was the best way to minimize and to ensure that the after-effect and the after-restoration of that property was appropriate under the circumstances.



Mrs. Grier: Can I have one final try? Would you have any objection to including a clause under the rehabilitation section that points out that in the case of pits or quarries or parts thereof that are covered by water that is not the result of excavation of aggregate below the water table, the conditions leading to rehabilitation and restoration will be included in the permit?

Mr. Scott: They really are, because we have covered it in sections 36 and 37, so it would be a reiteration of what has already been said.

Mrs. Grier: It is an option in section 37. It is not anywhere mandatory that rehabilitation be spoken to with respect to these kinds of pits.

Mr. Scott: It is a definitional problem. I am not sure that this would be corrected by putting it in in this place here. I think we adequately control it. As I have witnessed in the five years I have been in this position, I do not think we have issued any more than about one or two different permits from what had been in existence for many years before.

It is not something that we are having a lot of activity in, and it is very difficult to get these permits. It is more difficult to get one in the Great Lakes, probably, than it is on land. As a result, it is not the biggest workload in town for us, because there are very few people who are coming forward with these kinds of applications.

Mrs. Grier: Can you assure me then that if I am a licensee or permittee of a pit or part thereof that is covered by water, etc., I could not use the upcoming section, section 48, to say that, because I am a licensee or permittee of a pit covered by water, I do not have to agree to conditions on my licence that rehabilitate, because section 47 explicitly excludes me?

Mr. Scott: No. You do not have to worry about that. That particular clause could not be used detrimentally as you believe it might be used.

Mrs. Grier: See you in court.

Mr. Wildman: Mr. Scott, I quite like your approach. It is sort of "Don't worry, be happy."

Mrs. Grier: Read my lips.

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Mr. Wildman: Do you accept that all the arguments that you have made so carefully for explaining why section 47 should remain as it is, particularly with regard to the fact that rehabilitation of these kinds of operations under water will be included in the conditions of the permit, could indeed also be applied to permits on land?

Mr. Scott: Not really, because the definition of rehabilitation is specifically designed for above-water operations, whereas when we are talking about in the Great Lakes it is quite a different situation. We are also talking about a crown asset, to start with, because we collect royalties from these.

We have complete authority there. It is our resource—the government's resource or the people of Ontario's resource—and if we do not think that that is the best use of that resource because other things will happen as a result

of mining it or dredging it, we can turn it down on that alone. We could turn it down just because we had some concerns, which we did not even have proof were going to cause a problem. When it is a crown asset the crown does not have to do something with that asset unless it wants to. Similarly with selling a building; it is up to the owner of the building.

Mr. Wildman: That argument you just used would also apply to section 49 and to the sections that deal with permits on crown land, would it not?

Mr. Scott: That may be. From my experience with operations in the Great Lakes, though, I do not believe we have ever done anything like that, because in normal circumstances the commenting agencies have more power than we do under their legislation to stop this type of operation. They are not going to agree to something of this nature unless they are quite convinced that it is acceptable and the after-effects are not going to be detrimental.

Mr. Wildman: We can be dependent upon the International Joint Commission for the Great Lakes, but what about the Ottawa River?

Mr. Scott: In the Ottawa River you still have all the different legislation—

Mr. Wildman: In that case, are we dependent upon the province of Quebec?

Mr. Scott: Maybe, depending on whether they are out in the middle and where the boundary line is. They would be part of the commenting, because whatever impact was being felt would not only be on the Ontario side; it would be on the Quebec side as well.

Mr. Wildman: What about Parry Sound?

Mr. Scott: It is on the Great Lakes again. It is on Georgian Bay, which is part of the Great Lakes.

Mr. Wildman: So the IJC.

Mr. Scott: They may not have that much interest in Georgian Bay, but in terms of the commenting, there would be a very broad range of people.

Mr. Wildman: I will not prolong this any more, except to ask whether you have operations on inland lakes.

Mr. Scott: Not that I am aware of at present.

Mr. Chairman: I will put the question, but Mr. Fleet is standing outside the door. I am going to wait until he gets in.

Those in favour of section 47? Those opposed?

Section 47 agreed to.

Section 48:

Mr. Chairman: Subsection 48(1).

Mr. J. M. Johnson: I have a question I need some clarification on. Section 48 imposes the duty to rehabilitate the site. Would you mind



explaining to me how you can rehabilitate a site that is mined below the water level?

Mr. Scott: Okay. We are talking about land that has previously been above water, so it is a pond we are talking about. Is that correct?

Mr. J. M. Johnson: That is my understanding. Once you have mined below the water level, you create a pond.

Mr. Scott: I just wanted to differentiate between them so we know we are not talking about the Great Lakes.

Mr. Wildman: A big glacier created a pond in that case.

Mr. Scott: It is basically the sloping of the sides of the land into the pond and under water in the pond. What we quite often require when we are giving approval for mining below the water table on land-based operations is that when they are creating the pond they may have shallower areas and deeper areas so the fish will be able to reproduce in that particular pond. We may specify that the shoreline slope off at a very gentle grade in some areas so that aquatic vegetation will be able to grow there and create nutrients in the water for the wildlife and duck population.

Mr. J. M. Johnson: Let's back up a bit. I accept what you are saying on that, but it is my understanding that when you mine below the water level, you have no choice: You have a pond. Is that correct?

Mr. Scott: That is generally correct.

Mr. J. M. Johnson: Are there occasions when it is not?

Mr. Scott: I would say that is usually the case. There could be some example I am not thinking of.

Mr. J. M. Johnson: The reason I am interested is that before the minister gives approval for land that will be mined below the water level, we have to get away from the fact that you can do anything else with it except treat it as a pond.

Mr. Wildman: Perhaps the rehabilitation plan will require a diving board.

Mr. Scott: In England, for example, they do fill some of these back with inert waste. I am not suggesting that is an appropriate method in all areas, but it can be done in certain circumstances.

Mr. Wildman: I would not suggest you backfill.

Mr. Scott: We normally do not backfill. Normally, you do get a body of water left on the site.

Mr. J. M. Johnson: When permission is given to mine at that level or at that depth, you do reach this point that you cannot do anything with the land; the land is no longer there. For that reason, there has to be very serious consideration given to mining that depth. The reason I am concerned is that one of my townships, Puslinch, has gravel that is below the water level and there are extensive proposals now to mine that.

I asked the question in the Legislature in February of the Minister of Agriculture and Food; I interpreted his response as being that you could rehabilitate. I am trying to determine if the minister knew something I did not.

Mr. Scott: Indeed you can rehabilitate. I do not know in what context that comment was made. I do not have that comment in front of me, but in terms of what I think he might have been talking about, if you do have a pond, if you slope it properly, if you do re-establish the area around the pond—the whole property cannot go into pond, because you have to have setbacks—you could indeed still be farming part of that property, taking the hay crop and putting a grain crop on part of it.

One of the properties in your area, TCG Materials, does this. They have the sloped area going down to the pond all in hay and they take the hay crop off there. So that can be done. What also has happened in a lot of cases is that they put fish in the ponds and wildlife use the pond: ducks and other wildlife. There is in essence a rehabilitation of that site to an after-use that is partially agriculture, partially fish and wildlife, partially recreational. In some cases, there could even be residential along that area. It can happen.

What some institutions and individuals in Canada are doing now is trying to establish fisheries in those ponds that will be sustaining fisheries, commercial ventures basically. They are doing farming of that water body for fisheries.

Mr. J. M. Johnson: Has there been a study done on the ponds created to see whether they become stagnant or stay alive?

Mr. Scott: It could happen either way. Some of the ponds I have seen which are very shallow and may only be a foot of water in depth generally do become stagnant—

Mr. J. M. Johnson: And they will not support any fish or other—

Mr. Scott: If they are that shallow, they will not. The only place I have recently seen ponds of the nature I just talked about was down in the very southwestern part of Ontario. The gravel is so thin down there and there is a very silty material in a lot of those areas, so even if the water table is down deeper, there is a first water table created which allows for a wetland type of swale to be retained if they go too deep, and it leaves a foot or so of water. These operations I am thinking of now date back maybe 20 or more years.

The new operations I have seen, anything we have been approving in recent years requires that if you are going to go below the water table you go to an adequate depth so that you are going to be able to have an after-use created on that property that is acceptable. You could put fisheries in it; wildlife will be able to inhabit it, and it is not going to be a stagnant water body as you referred to.

Mr. J. M. Johnson: That is the answer I was hoping for. When we consider rehabilitation, and it is going to end up in a pond, then it has to be a meaningful pond. If you require that, then that is part of the rehabilitation plan and that makes sense.

Mr. Ruprecht: Just a quick follow-up: Is that actually being



pursued? Is that policy something you are actually looking at and taking some initiative in pursuing?

Mr. Scott: Yes, it is. Mr. Johnson, I do not know if you got one of our fish and wildlife rehabilitation booklets that we handed out to the members the first day.

Mr. J. M. Johnson: No, I did not.

Mr. Scott: Okay, we will give you one of those. That document is one of our initiatives where we are trying to encourage that particular type of rehabilitation. We also have a relationship with the Ministry of Agriculture and Food, where we have done publications with them and we have policies between the ministries that document that there will indeed be the type of rehabilitation I was just talking about now.

Mr. J. M. Johnson: Where does that fall in section 48? Or is that drafted into this bill?

Mr. Scott: Subsection 48(1) would cover part of it: The minister will require progressive rehabilitation. It will also be in the conditions, and in the regulations we will have more details on all that. The site plan specifications will cover all that, and any of those things are all binding on the operator. In fact, in recent years, for any operation that we have issued licences for where they are going below the water table we have been putting conditions on about the monitoring and a lot of other things in addition to what is covered under all the things I just mentioned.

Mr. Chairman: It is our stopping time for the morning session, lady and gentlemen. If you are finished with subsection 48(1), I would like to call it, because there is a proposed amendment to subsection 48(2).

Mr. Wildman: I would just like to point out that there is an abandoned gravel pit in my area that the Ontario Provincial Police is very concerned about, because of the wildlife that seems to inhabit it every Saturday night.

Mr. Fleet: Bud, I thought you stayed home Saturday night.

Mr. Chairman: The final comment leads me to believe that Mr. Wildman does need some lunch. Shall subsection 48(1) carry? Carried.

We will pick up with subsection 48(2) after lunch.

Mrs. Grier: Just before we adjourn, for the benefit of Mr. Ballinger, I want to flag that we had hoped to include—we have not given notice of this amendment, I guess—in the latter sections a provision that hearings under the board in respect to this act would be covered by the pilot project and intervener funding.

Mr. Fleet: Which section would that come under?

Mrs. Grier: According to legislative counsel, it would come under the catch-all sections at the end, an additional section that applies.

Mr. Ballinger: Thank you. We will discuss that at lunchtime and we will be prepared to debate with you.

Mr. Chairman: We are adjourned until 2 o'clock.

The committee recessed at 12:04 p.m.





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STANDING COMMITTEE ON GENERAL GOVERNMENT

AGGREGATE RESOURCES ACT

WEDNESDAY, APRIL 19, 1989

Afternoon Sitting





STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: Elliot, R. Walter (Halton North L)  
VICE-CHAIRMAN: Faubert, Frank (Scarborough-Ellesmere L)  
Bryden, Marion (Beaches-Woodbine NDP)  
Callahan, Robert V. (Brampton South L)  
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Cordiano, Joseph (Lawrence L)  
Cureatz, Sam L. (Durham East PC)  
Fleet, David (High Park-Swansea L)  
McLean, Allan K. (Simcoe East PC)  
Ruprecht, Tony. (Parkdale L)  
Sola, John (Mississauga East L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Callahan  
Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Ms. Bryden  
Johnson, Jack (Wellington PC) for Mr. Cureatz  
Wildman, Bud (Algoma NDP) for Mr. Charlton

Clerk: Carrozza, Franco

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Natural Resources:

Scott, Dale W., Manager, Aggregate Resources Section  
Searle, D. G., Solicitor, Legal Services Branch  
Masham, John S., Aggregate Enforcement Policy Adviser, Aggregate Resources  
Section  
Ballinger, William G., Parliamentary Assistant to the Minister of Natural  
Resources (Durham-York L)

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, April 19, 1989

The committee resumed at 2:05 p.m. in room 228.

AGGREGATE RESOURCES ACT  
(continued)

Consideration of Bill 170, An Act to revise several Acts related to Aggregate Resources.

Section 48:

Mr. Chairman: The chairman recognizes a quorum. We were dealing with subsection 48(1) in this morning's session and we have been advised of a proposed amendment to subsection 48(2).

Mrs. Grier moves that subsection 48(2) of the bill be amended by inserting after "licensee" in the first line, in the third line and in the sixth line in each instance "or former licensee."

Mrs. Grier: I would point out in support of the amendment that the subsection provides that "the minister, upon being satisfied that a licensee, a permittee or a former permittee has not performed adequate progressive rehabilitation." It seems to us appropriate that if former permittees are involved, then former licensees ought to be as well.

Mr. Wildman: Just to be fair.

Mr. Ballinger: In our discussion with staff, there is some concern that the licence is not cancelled until such time as rehabilitation is fully completed. I guess I will have to defer to Mr. Scott to chat about the technical aspect of that.

Mr. Scott: We do not see this as a problem, because we would still have control from the—

Mrs. Grier: You do not see anything as a problem.

Mr. Scott: Well, I do have problems, but we always look at them in the positive sense that we can always overcome them.

Mrs. Grier: In this context or setting, anyway.

Mr. Scott: We try to call them situational occurrences instead of problems.

Mrs. Grier: Which you deal with with consistent flexibility.

Mr. Wildman: That is like a Ministry of Transportation guy who objected to those bump signs that you see along the highways. He said they should say "structural deficiency."

Mr. Scott: However, we do not see that under the new act an aggregate resources licence is cancelled. It is really not. We keep it in



force until the rehabilitation is in place, and on any of the existing licenses under the Pits and Quarries Control Act, they will still be required to perform the responsibilities of rehabilitating and all the different requirements of the act. Even when the new act comes in, if those properties do not get licensed, they have to meet those same requirements that they would have had to meet under the old P and Q act before they would be allowed to relinquish that property. The force of the law would still be on their shoulders, so we do not see the problem that you were trying to address as being a real problem, because the two acts, either the old act or the new act, will cover that problem the way they are presently written.

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Mr. Wildman: Would you agree that there is a more stringent, or a more onerous, if you want to use that term, requirement for rehabilitation under this act than there was under the Pits and Quarries Control Act?

Mr. Scott: Yes. A lot of that has to do with doing progressive rehabilitation, and that would be covered in a different manner. We would be doing that on an ongoing basis, whereas the concern here is that you would be able to walk away or you would not have to do it all and the minister would lose out in his right to judge that it is either satisfied or not satisfied.

Mr. Wildman: The reason I asked that question is that if you are not including former licensees under this section and are saying that they are under the control of whatever the conditions on their licence say under the Pits and Quarries Control Act, then in a sense are you not saying that person has less stringent controls on him or her than a person who is licensed under this act?

Mr. Scott: Not really, because once they are licensed under this act, the minister's requirement for progressive rehabilitation will be a requirement they will have to adhere to anyway.

Mr. Wildman: I understand what you are saying, but what about the grandfathering clauses under this act?

Mr. Scott: The concern you are trying to address, as I see it—and maybe I am wrong in trying to interpret what you are saying.

Mr. Wildman: No, go right ahead. Sometimes I have trouble with it.

Mr. Scott: What I think you are saying is the properties that are presently licensed will have a loophole there so that they will be able to get out of doing rehabilitation. Am I correct?

Mr. Wildman: Right, or at least they will be doing it under a previous act that may not be as strong.

Mr. Scott: That is quite true. They may be, because what happens is if a property wants to go under this act, it will go under it, and no matter what we said on its former licence, that will be past history. The new licence will be the governing rule and the minister can specify that they have to do progressive rehabilitation; so they will be covered.

The ones that you are really concerned about, as I interpret it, are the ones that may not want to be relicensed.

Mr. Wildman: Exactly.

Mr. Scott: Okay. Those properties, no matter what we write in this—well, I guess you could write something in it, but historically, legislation—and some of the lawyers may want to jump in on this. I have been told that legislation should not be retroactive, per se.

Mr. Wildman: Unless it is a pay bill.

Mr. Scott: Well, okay. However, with this type of legislation it is looked at, but it should not be retroactive. What will happen is that if someone wants to walk away from the property that is presently licensed, he will have to meet all the existing requirements under the Pits and Quarries Control Act, which will include rehabilitating the area that is under licence to the specifications of his site plan and/or the act, whichever is more specific and more detailed.

I think the loophole that you are trying to correct is already corrected by different means.

Mr. Wildman: In essence, you are saying the people I am concerned about are grandfathered.

Mr. Scott: They are either grandfathered or they are looked after, because when they want to close down, we will deal with them under the old act and they will not be able to get out from under that requirement.

Mr. Wildman: But what we are attempting to do is bring them under this act, and that is where the disagreement is. You are saying that would be retroactive legislation.

Mr. Scott: Most of them will be, but there will be a few that will not be, because they are running out of material and it does not make any sense to relicense.

Mr. McLean: On that very point, there will be several, hundreds of them out there that will not be coming under this act.

Mr. Scott: If they are running out of material and it is not economic to relicense them, that could be the case. I am not sure. I have not had the opportunity to look at all the properties.

Mr. McLean: Maybe for clarification, any pits that are in operation today, large pits that have been there for many years that do not have a site plan, perhaps are there under an old Ministry of Resources Development drawing, can continue on as they are. Is that right?

Mr. Scott: They can continue on by making application for a new licence. We will issue a licence under the new act and they will have new site plans required to be submitted within the first four years. They will have to meet all the requirements of this new act.

Mr. McLean: So, every quarry and every gravel pit will have to conform, within four years, to this act.

Mr. Wildman: Unless they are stopping operations.

Mr. Scott: Unless they are stopping operations because they are



going out of business.

Mr. McLean: Okay. I think that was back at the start, when we were dealing with it, but I just wanted it to be clear.

Mr. Wildman: But the problem is, if they are stopping operations, we cannot then require them to do the kind of rehab under this act. They would come under the Pits and Quarries Control Act. That is where our disagreement lies.

Mr. Scott: Yes, they will come under the Pits and Quarries Control Act, but in closing up the property, the pits and quarries requirement will not be that much less, really, because most of them have specified in their site plans what they are going to do. That would probably be the binding thing anyway, because you will not have a new site plan for them, because they are not going to come under this act. It is sort of an endless circle there, and I cannot see how we can make it any tighter than we presently have it.

The Chairman: You might accept our amendment.

Mr. McLean: Further clarification, then, Mr. Scott. The municipalities now, or the ministry, will not receive any funding for rehabilitation until such time as they are licensed under this act.

Mr. Scott: That is correct.

Mr. McLean: The day this bill gets royal assent does not mean to say that those municipalities they are hauling gravel from will receive any moneys for tonnage, or is that—

Mr. Scott: It will be based on when the licensing goes forward and we get everything brought into line. You are going to have to issue a licence under the new act before everything falls into place.

Mr. Ballinger: But you can be assured, Mr. McLean, that affected municipalities like mine, Mr. Johnson's and Mr. Elliot's will be pushing extremely hard to have that process moving very quickly, because it has an impact on all the ridings, but more specifically on the heavily extractive ones.

The Chairman: Questions? Those in favour of the amendment? Opposed? Defeated.

Motion negatived.

The Chairman: Should subsection 48(2) carry? Carried.

Should section 48, in its entirety, carry? Carried.

Section 48 agreed to.

Section 49:

The Chairman: Shall section 49 carry? No? Discussion?

Mrs. Grier: Same arguments. At our discretion, we just vote against it.

The Chairman: Those in favour of section 49? Those opposed? Carried.

Section 49 agreed to.

Sections 50 to 52, inclusive, agreed to.

Section 53:

The Chairman: I have a notice of amendment with respect to section 53 by the government side, I believe.

Mr. Ballinger moves that section 53 of the bill be amended by striking out "aggregate" in the first line.

Mr. Ballinger: Mr. Chairman, it is a modification. Mr. Scott may want to speak to it.

The Chairman: Is there any discussion by the committee?

Interjections.

The Chairman: Does section 53, as amended, carry? Carried.

Section 53, as amended, agreed to.

Section 54 to 56, inclusive, agreed to.

Section 57:

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The Chairman: Now we are beginning Part VII, Offences and Penalties. I have a notice of an amendment to subsection 57(1) by the government side.

Mr. Ballinger moves that subsections 57(1) and (2) of the bill be struck out and the following substituted therefor:

"(1) Every person who operates a pit or quarry except under the authority of a licence or permit is guilty of an offence.

"(2) Every person who contravenes or permits the contravention of the site plan or a condition of the licence or permit is guilty of an offence."

Mr. Ballinger: It is really the clarification of our intent. If you want, Mr. Scott could clarify it.

Mrs. Grier: We agree wholeheartedly.

Mr. Chairman: Discussion is not necessary?

Motion agreed to.

Mr. Chairman: Shall subsection 57(3) carry? Carried. Shall subsection 57(4) carry? Carried. Shall section 57, as amended, carry?

Section 57, as amended, agreed to.

Section 58:



Mr. Chairman: Shall subsection 58(1)—

Mr. Ballinger: I have an amendment.

Mr. Chairman: I think there is an amendment here again, yes.

Mr. Ballinger moves that section 58 of the bill be struck out and the following substituted therefor:

"(1) Every person who commits an offence under section 57 is liable on conviction to a fine of not less than \$500 and not more than \$30,000 for each day on which the offence occurs or continues.

"(2) The maximum fine provided under subsection 1 may be increased by an amount equal to the amount of the monetary benefit acquired by or that accrued to the convicted person as a result of the commission of the offence."

Mr. Ballinger: Subsection 1 is an enhancement; subsection 2 is an addition. Again, if an explanation is needed, Mr. Scott is willing to give it.

Mr. Fleet: I just want to make one comment on the record with respect to minimum fines. Ordinarily I am not too wild about them, because there are always cases that come before a court where it is really, truly exceptional. The other problem with it is that there is sometimes the tendency of courts to shift down to the lower end of the minimum rather than awarding something higher, towards the maximum. That is really the more substantive problem, and at least one of the groups that appeared before us pointed that out.

One of the reasons why I guess, on balance, I find myself still voting for this provision is that it parallels the Environmental Protection Act in terms of enforceability and I think it is important that we retain consistency.

Mr. Chairman: Any further comment?

Motion agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60:

Mr. Chairman: We are now starting part VIII, entitled "Territory Without Municipal Organization." I have a notice of an amendment by the NDP for subsection 60(1).

Mr. Wildman: Yes. I have another question on the section as it is currently written in the bill, if I could raise that before I move the amendment.

Mr. Chairman: That is fine.

Mr. Wildman: There are some cases in areas of the north without municipal organization where the areas are under a ministerial order with regard to zoning, under the Ministry of Municipal Affairs. In a few areas, the Minister of Municipal Affairs has appointed a planning authority. One specifically in my riding I could point to is the Sault Ste. Marie North

Planning Board, which deals with a very large unorganized area from Sault Ste. Marie north to the Montreal River, which is about 70 miles by road from one end to the other and covers about 11,000 permanent and seasonal residents—people, not residences.

I am just wondering if there is any provision—I think it may sound funny coming from me, but I think this might be done in the Regulations Act rather than putting it in the act, because these are exceptional situations—where there could in fact be notification given to the planning board in that area or notification given to the Ministry of Municipal Affairs, which would then transmit it to the planning board, since the planning board is in fact a creature of the Ministry of Municipal Affairs.

Mr. Scott: I do not have any problem with the MMA because we would be dealing with them on a regular basis from that standpoint. In terms of the planning board that has been appointed by them and is responsible, I assume, to them—

Mr. Wildman: Yes, they are. In that sense, the minister in that part of the Municipal Act acts as the municipality.

Mr. Scott: Okay; it is one and the same then. By your explanation, you answered my question. So we do not have a problem at all with that and that would be an automatic thing we could do through normal policy.

Mr. Wildman: That would be useful because if the Ministry of Municipal Affairs would transmit that to the planning board, then at least there would be some local authority to which people could go to to get some information about what is happening.

Mr. Scott: Would that area include the Goulais River area?

Mr. Wildman: Yes, it would. That is a famous—

Mr. Scott: It is amazing it is not organized into some kind of—

Mr. Wildman: As a matter of fact, I am having some meetings with the Ministry of Municipal Affairs. I think this is the fourth study they have done about how to organize that area. At any rate, that would be useful if you could keep that in mind.

That is the largest area, but there are other areas in northern Ontario where there are planning boards that deal with unorganized areas. In some cases, they are municipal planning boards that have been given responsibility by the ministry to deal with areas outside the municipality that are unorganized.

Mr. Scott: We will go back to Municipal Affairs and say: "This is one of the issues that came up. Could you give us a list of all such boards or associations you are involved with where we could use that as a vehicle to transmit information from our district office through to the local citizens?"

Mr. Chairman: Mr. Wildman moves that subsection 60(1) of the bill be amended by adding at the end thereof "and to be given in signs placed in the prescribed manner on the site."

Mr. Wildman: The amendment's purpose is to bring this section in line with what we are requiring to be done in municipal areas. It seems to me



that it is even of more use to have notification on the site in an unorganized area, because in most cases, there is not any organized agency or corporate body like a municipality to which people can go to get notification. If we are requiring notification in the newspaper in municipalities and signs to be placed on the site in municipalities, it seems that it is even more useful to do that in an unorganized area where people might not be able to get information from the municipality because there is not any municipality.

Mr. Ballinger: We agree.

Mr. McLean: I happen to agree with his amendment. I think it is important. You can drive for miles and not know what is going to take place. If you see a sign on it—

Mr. Chairman: I think we are going to approve it, folks.

Mr. McLean: That is good, but I just wanted to let you know that I did.

Motion agreed to.

Mr. Chairman: Is subsection 60(1), as amended, then carried? Carried. Subsection 60(2) and 60(3)? Carried.

I have a notice that subsection 60(3a) will be proposed by the government.

Mr. Ballinger moves that section 60 of the bill be amended by adding thereto the following subsection:

"Idem

"(3a) Upon receipt of a notice under subsection (3), the minister shall provide the applicant with a copy thereof."

Mr. Ballinger: It is a bit of housekeeping and it is a minor addition.

Motion agreed to.

Mr. Chairman: Shall subsections 60(4), 60(5), 60(6) and 60(7) carry? Carried.

Section 60, as amended, agreed to.

Section 61:

Mr. Chairman: Shall subsection 61(1) carry? Carried. Shall subsection 61(2) carry? Carried. Shall subsection 61(3) carry? Carried. Shall subsection 61(4) carry? Carried.

Section 61 agreed to.

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Mr. Chairman: We are now entering part IX, titled "Miscellaneous." In section 62, I note the government has a proposed amendment.

Section 62:

Mr. Chairman: Mr. Ballinger moves that section 62 of the bill be struck out and the following substituted therefor:

"Record keeping

"(1) Every licensee or permittee shall keep, for a period of seven years, detailed records of the operation for which the licence or permit has been issued, including copies of all documents relating to sales and shipments.

"Inspection of records

"(2) Every licensee or permittee shall make available for inspection by any person authorized for the purpose of this act all the records required to be kept under subsection (1)."

Mr. Ballinger: It is similar to the federal tax legislation and Mr. Scott would be willing to explain, if necessary.

Mr. Chairman: Is any discussion or explanation necessary?

Motion agreed to.

Mr. Chairman: Shall subsection 62(1), as amended, carry? Carried.  
Shall subsection 62(2), as amended, carry? Carried.

Section 62, as amended, agreed to.

Sections 63 and 64 agreed to.

Section 65:

Mr. Chairman: Shall section 65 carry?

Mr. Wildman: Just a second: Basically what you are saying is that in this situation an inspector from the occupational health and safety branch would be able to enforce the regulations of that act in a pit or quarry operation. Is that not the import of this section?

Mr. Scott: No. This is basically to indicate that those regulations of the Occupational Health and Safety Act are in addition to, so that anything in that particular act is not overruled or—

Mr. Wildman: That is what I meant.

Mr. Fleet: The answer, I think, is yes.

Mr. Scott: Yes.

Mr. Wildman: Okay. You may not be able to answer this, but I will raise it anyway. I have had some situations, not very many—one or two—where an inspector from that branch has gone to a pit operation after I asked him to go and look at it, and he has found problems but has not been able to act because there was no complaint from an employee.

Complaints from employees are what brings their act into effect, not the fact that I might be complaining. The inspectors would phone me up and say,



"Yes, there is a problem here but there is nothing we can do about it, because we didn't get a complaint from an employee."

Mr. Scott: I am not an expert on their legislation, but based on my knowledge, that is the case with their legislation. Their legislation is written basically from an employee-employer standpoint.

Mr. Wildman: So if the complaint were about an unsafe configuration of the pit—in other words, improper sloping or something like that—which might be dangerous to a person, the inspector could look at it and say, "Yes, that is dangerous to a person," but unless the person who is complaining is an employee, there is nothing he can do about it.

Mr. Scott: Under their legislation, that would be the case. We would notify them if we have a problem. We have a relationship with that ministry that if our inspectors see some safety problem, we notify it. What they can do about that, I guess, is a different matter.

It depends on whether the property is operating or whatever. If the property is an operating property, it is also my understanding that they do not necessarily have to have—

Mr. Wildman: No, if it is operating they can go in and inspect it.

Mr. Scott: They can go in and inspect it. In the light of Ontario doing the inspection, they can protect that worker even if he does not realize he has a safety problem.

Mr. Wildman: That is right. The case I raised is a case in an area that is not designated under the Pits and Quarries Control Act, and I was searching for somebody who could enforce better methods on a pit. Unfortunately, at the time I called him, the pit itself was not in operation. He did in fact go and look at it and said: "Yes, there is a problem, but unfortunately, all I can do is advise the owner of the pit that perhaps it would be better if he improved the slope. I cannot enforce an order on him because the pit is not operating and there was not a complaint from an employee."

Mr. Chairman: Any further discussion? Shall section 65 carry?

Section 65 agreed to.

Section 66:

Mr. Chairman: I have notices of amendment by both the government and the New Democratic Party for subsection 66(1). I will call the government amendment first.

Mr. Ballinger: This is trying to rectify a legal ambiguity, and as everyone knows, I am not a lawyer.

Mr. Chairman: Mr. Ballinger moves that subsection 66(1) of the bill be amended by striking out "conflicts with" in the fifth and sixth lines and inserting in lieu thereof "differs from."

Mrs. Grier: Can you tell us what the legal difference is between "conflicts with" and "differs from."

Mr. Chairman: Would you like the legal person to be the government lawyer, the legislative lawyer or the ministry lawyer?

Mrs. Grier: Let's try legislative counsel.

Mr. Yurkow: I believe the problem the ministry was addressing is the concept of "conflicting with" is more difficult to show than "differing from." They may differ and there may not be a direct conflict. I think it was this change of emphasis that the ministry was after.

Mr. Ballinger: I might add it really relates to a legal case, the township of Uxbridge versus Timbers Bros. There was a difference of opinion as it relates to the regulatory bylaw.

Mr. Fleet: Who instigated that case?

Mr. Ballinger: I have to get my community's name on the record as often as possible. Mr. Wildman does it almost every other phrase.

Mrs. Grier: Can I be clear then. Who is allowed to impose the strictest provisions under this as you are proposing? Is it that if a municipality wishes to be stricter than the act, it is not going to be able to?

Mr. Wildman: That is what it means.

Mrs. Grier: That is what you mean.

Mr. Ballinger: The ministry position prevails.

Mrs. Grier: The ministry prevails.

Mr. Ballinger: That is right.

Mrs. Grier: Your worry is that "conflicts" would not allow you to do that.

Mr. Ballinger: It is the interpretation of what "conflicts with" or "differs from" mean, and that is up to the lawyers.

Mrs. Grier: I am looking at the Foundation for Aggregate Studies submission. The courts determined that applying more stringent standards was not a conflict.

Mr. Searle: We are attempting to avoid that and apply a uniform standard across the entire province for the regulation of the pit and quarry activities.

Mrs. Grier: So a municipality cannot regulate something that it deems is not covered by this act.

Mr. Ballinger: No, they can regulate things that are not covered by the act, but for anything that is covered by the act, there has to be a consistency across Ontario that everyone is treated the same. Hours of operation and such things as our regulatory bylaw in Uxbridge are not covered by this act and will still be covered by our own regulatory bylaw. We are the only municipality in Ontario that has a regulatory bylaw that controls the hours of operation, upheld by the Supreme Court of Canada.



Mrs. Grier: Okay. This act says nothing about hours of operation. You are going to be allowed to do that, but if you wanted to do stronger rehabilitation, you would not be allowed to.

Mr. Ballinger: That is correct. It has to be consistent with provincial criteria within the act.

Mr. Wildman: For the sake of argument, if in your riding a municipality that has a large number of pits wished to pass a bylaw that would have more stringent controls on hours of operation than envisaged in the licences the ministry was going to approve, this provision would prevent that bylaw from having effect, would it not?

Mr. Scott: Yes. In essence, that would be the case. It includes other things, like the annual tonnage fee. There are a couple of townships around the province, and I believe one of them is around the Toronto area, that have an annual fee for one or two of the licences in the township at the present time, mainly because they are more recent ones and through zoning bylaws and so forth they have brought that in. This would make those separate fees redundant, and that is what we are really trying to do.

We feel that with any of the other bylaws that we are aware of with other municipalities, other than the hours of operation and there may be a few other ones but we do not cover those anyway, there is really not going to be that much conflict or that much negation of those bylaws, because they really do not exist. It is really an arbitrary argument that does not equate to fact in most cases.

Mr. Wildman: But hypothetically, it is conceivable that a township or municipality might wish to pass a bylaw that would not necessarily conflict with the legislation but would place additional requirements for rehabilitation on a pit.

Mr. Scott: We have never run into this that I am aware of. We have run into the situation where one municipality, because it does not want pits at all, has had 1,000-foot setbacks from boundary lines. It basically has nice overlapping boundaries so there is nowhere to dig. I do not think that type of situation is really what we want from a planning standpoint either, and those are the kinds of things we are talking about. It is really not a situation where people have wanted more appropriate rehabilitation that we are overruling, because that has not really been one of the things anyone has ever come up with in the past.

We have basically had a few situations where these setbacks have been greater or more onerous than they really should be, but it has done nothing for anyone. The municipality wants us to administer its bylaw. We do not have power to administer their bylaw, and indeed in that circumstance, we would not want to administer it because it was an unfair bylaw.

The only thing that came of this was that our field people and the municipal council and clerk and so forth basically argued with each other. It broke down where the relations between the two parties deteriorated and they ended up not really co-operating for a period of time thereafter. That is what we are trying to overcome, because with this legislation it is so important that the municipality and ourselves work closely together that we do not want to have that type of conflict created in the future.

Mr. Wildman: We would not be as concerned about this if in fact we

were indeed talking about conflict, but it is the government amendment that bothers us. It takes out the word "conflict."

Frankly, we would like to see the word "conflict" remain, because as I understand it, the courts have determined that applying more stringent standards are in fact not a conflict. Only less stringent standards are in conflict, according to the courts.

Mr. Scott: What I meant by conflict was not the definition you are reading in. I was actually referring to conflict between the local municipality and ourselves where we end up in a conflicting situation where they have one set of rules and we have a different set of rules. In most cases, we ended up where relationships broke down because we could not solve their problem and they could not solve ours because no one was willing to compromise on it.

By putting this new wording in—we are trying to address the same problem—originally, the words that were chosen were thought to be the right words, but then afterwards, in reviewing that particular court case, we realized we were still in a problem and we were going to have the same problem that we were trying to correct. That is why the "differs from" wording was put in, to try to address that situation.

Mr. Wildman: The problem, though, is that if you take out the word "conflict" and put in the words "differs from," you are then making it, as I understand it, and I am certainly not a lawyer, impossible for a municipality to pass a complementary bylaw which would incorporate your regulations, your requirements and your conditions but would add additional requirements that do not conflict with them for the licensee to meet.

I certainly would not be in favour of allowing a municipality to pass a bylaw which would be in conflict with your regulation, but I think it is unfortunate that you would put "differs from" in there and prohibit a municipality not only from passing a bylaw that is in conflict with the ministry's regulations but also from passing a bylaw which is complementary to your regulations.

Mr. Scott: We are trying to address consistency across the province, and if we were to do what you are suggesting, we would lack that consistency and the whole relationship we are trying to build with this act would be in jeopardy. That is where we are really coming from.

Mr. Wildman: Okay, but I do not think you can in fact—and you have argued this yourself in the past during this procedure—treat the whole province the same. I remember a particular section in which you argued that.

You argued that certain municipalities have a lot of aggregate and a lot of aggregate extraction going on, whereas other municipalities may have very little or none. Therefore, it would probably be quite appropriate for a municipality with very little aggregate extraction to be treated in a way different from one that has a great deal of it that affects the community.

Mr. Scott: I do not necessarily think they are going to lack that ability. Mr. Ballinger, I guess it was, made the comment—

Mr. Ballinger: I have always spoken highly of you. The guy cannot even remember my name. I practically lived with you for the last three months and you cannot even remember my name.



Mr. Sola: It shows the impression you made.

Mr. Scott: I was trying to think of who it was, and now I do recall it was the man from Uxbridge. We were talking about the fact that they have a bylaw which governs the hours of operation. That would be quite reasonable in an area that is heavily built up. We do not cover that; they can cover it. It does not cause any hardship for them or for us because that is something additional which we are not involved with.

In a more rural municipality, they probably would not be concerned about that, so they would not need to. So there is still flexibility to do those other things that are necessary for that type of jurisdiction. This act is quite specific and detailed and has quite stringent requirements in the areas that it does cover. I cannot envision municipalities wanting to get more specific, more detailed and more onerous in their requirements than what is in here in the area of rehabilitation or whatever.

If there is a problem at the time of licensing, and their bylaw is not going to be retroactive anyway to properties that are presently in operation, when a new one is going through the hearing process, under the locational control aspect through to the Planning Act with the official plan change, the zoning and all those things, or under the licence application, the concerns that you are talking about can be addressed.

We can put extra conditions on those licences to address that. Indeed, with the way the act is written now, afterwards we can even come back and put extra conditions, if necessary, once the licence is issued, to address very specific and very special circumstances on an individual property that would be able to overcome your concern.

I personally do not think there is going to be that much problem in bringing this in and keeping the municipalities relatively happy. The ones that may not be happy would be ones that want to outlaw gravel mining altogether in their area. In terms of the way it is written and the way the act is designed to put extra conditions on as appropriate—the Ontario Municipal Board and so forth with the hearing process—we feel that your concerns are addressed and that this is the only way we can establish a good working relationship with the municipalities. So there is an equal footing where everybody is working with a set of rules so they can all know from the start where they are going and where they are not going.

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Mrs. Grier: I am not familiar enough with the Municipal Act. What kinds of bylaws does section 210, paragraph 137 allow?

Mr. Scott: It allows regulatory bylaws.

Mrs. Grier: So what you are in effect saying then is that if a municipality passed a zoning bylaw, an official plan amendment that said "There should be no gravel extraction in this township" or "It is prohibited as a use of any land within that municipality"—

Mr. Ballinger: They would have to justify that.

Mrs. Grier: No, that would not be allowed under this act, as you are suggesting it.

Mr. Wildman: It would not be allowed. It would be in conflict with it.

Mrs. Grier: It would be in conflict with the act, and the minister, with all of the discretion we have given him, even if they did get that kind of a bylaw and had it in place, could override it and issue the licence. You are really taking away from the municipality the power to have any control over whether it wants to have aggregate extraction within its boundaries.

Mr. Scott: I may be wrong, but I believe you are saying that the locational control would be taken away through what we are doing here.

Mrs. Grier: Yes.

Mr. Scott: The locational control will not be affected because that is based on the Planning Act. The zoning bylaw and the official plan status are under the Planning Act. Regulatory bylaws under the Municipal Act are basically those that have to do with hours of operation, that it can only be half loaded on certain roads and things like that.

Mrs. Grier: But you already have the loophole that if they do something under the Planning Act, the minister can override that.

Mr. Scott: No, we can never override that.

Mr. Wildman: You mentioned 1,000-foot setbacks.

Mr. Scott: No, that is under the regulatory bylaw.

Mr. Wildman: But if they put that in their plan—

Mr. Ballinger: Let me jump in here, please. Only based on my own experience in Uxbridge, we have a regulatory bylaw which goes back to when I was first elected in 1972. Of course, the reason was that in the Timbers Brothers case, they were undermining a line fence and we got into a real harangue in the court. We found that the Pits and Quarries Control Act was of absolutely no use to us as a municipality, so what we did was enact our own regulatory bylaw.

It was appealed to the Supreme Court of Ontario, where we won. It was then appealed to the Supreme Court of Canada, where we won as well. We are the only community in Ontario that has won, that has been upheld. It deals with hours of operation and entrance to the pit. We wanted some sort of normal maintenance. It did not have to be paving, but it had to be calcium chloride or something. For dust control, it had to do with such things as fencing, a lot of cosmetic stuff, berming and screening, all of those things.

What this act is doing is saying there is now going to be some consistency. Had there been back in the early 1970s with an act that was enforceable, the municipality would not have a regulatory bylaw today. We were just unhappy with what was happening within our township. It seemed like every time we got caught into a legal battle, the provincial act was totally useless. So now there is going to be some reasonable consistency across Ontario for a minimum standard.

As far as the municipality is concerned, if they still want to control—

Mrs. Grier: But they cannot go to a maximum.

Mr. Ballinger: Coming from an aggregate-affected municipality, once this act is in place, our understanding from a legal point of view is that



there are some real teeth in here that they never had under the P and Q Act. As long as the Ministry of Natural Resources does what it is supposed to do and enforces this act, then it will be, in my opinion anyway, unnecessary in the major affected areas to worry about having stricter or more stringent requirements.

I can tell you, representing a riding, that I personally am not going through this exercise and hoping this sits on the shelf somewhere and collects dust. This is, from my point of view, welcome news in the aggregate-affected municipalities. I have the assurance, and they are sitting here, that when this act receives royal assent, we will be meeting to discuss such things as enforcement and training and all those things that will help the people out in the field to uphold this act.

Mrs. Grier: Then why do you not leave it as "conflict?"

Mr. Ballinger: Because of, again, the legal interpretation and the ambiguity of it; "differs from" is more specific and it is understandable by everyone that your regulatory bylaw, as an example, cannot differ with the province in the following areas. So that we all understand that. Once you say "conflict with," that becomes a whole new debate.

Mrs. Grier: But you have just told us that the court had defined "conflict with" as not meaning anything that was a standard above what is in the legislation. If we view this legislation as the minimum standard that we want to have applied consistently to all municipalities, is it not appropriate to at least allow the municipalities the option of going over and above that standard if they wish to?

Mr. Ballinger: I want to discuss the point that Mr. Scott made, and I think the danger of that, quite honestly, is that you get municipalities who pass a regulatory bylaw with the full intent of doing away with the industry and with extraction altogether.

Mrs. Grier: That would be fine if that was their choice.

Mr. Ballinger: But we are talking about provincial legislation. In a nonrenewable resource, I would say to you, Mrs. Grier, with the greatest respect, I do not subscribe to that.

Mr. Wildman: If they are not mining it, it is still there; it is still a resource.

Mr. Fleet: Not if nobody can get at it.

Mr. Chairman: Gentlemen, Mr. McLean is next on the speaking order. If you want to talk, get on the order. There are several people waiting.

Mr. McLean: I realize what the township of Puslinch was saying. They were certainly saying that they wanted to be able to impose stricter standards. What I am seeing here is that the municipality has not got very much say at all of what is going to happen.

Mr. Ballinger: I disagree. How can you make that statement?

Mr. McLean: I can make it because that is my belief. The municipality is going to have very little—

Mr. Ballinger: The standards are laid out in the act.

Mr. McLean: —impact. It is going to take precedence over anything that the municipality has. So municipalities are going to find themselves in a bit of a bind.

Mr. Chairman: Mr. Ballinger is next on the speaking order.

Mr. Ballinger: I do not want to belabour the point, Mr. Chairman, but after 15 years with a municipality that has been involved with this process, I can tell you this act is welcome news for the major affected municipalities in Ontario. We can argue till the cows come home that a municipality should be able to outlaw it. Puslinch is into a different argument altogether. They are de-designating areas that have a known resource. That is something that they are going to have to be able to justify before the Ontario Municipal Board.

Mr. Chairman: Mr. Searle, do you have a legal point?

Mr. Searle: There seemed to be some concern that the act would be overriding the zoning bylaw. Is that correct?

Mrs. Grier: However it is done, the act would be overriding the desire of the municipality to (a) impose more stringent standards that are in the act, or (b) to say, "We don't want any aggregate removal whatsoever."

Mr. Searle: But if the zoning is not initially in place, then no licence can issue.

Mrs. Grier: But the minister can override that?

Mr. Searle: No, he could not.

Mr. Wildman: But he could override an operating bylaw.

Mr. Searle: The intent is that it will do that. But if the area is not zoned properly, it is for aggregate extraction; this act would not override that bylaw.

Mr. McLean: But once it is zoned, then the municipality has no more say. Once it is zoned for extraction, then this act—

Mr. Searle: That is the intent.

Mr. Wildman: That is right.

Mr. McLean: —takes effect and the municipality has no further say. That is—

Mr. Fleet: They certainly have a say; they just do not have a final decision.

Mr. Chairman: Would you wait your turn, please?

Mr. Wildman: It is true that they do have a say, because in the act they have the right to comment every four years, but that is it.

Mr. Fleet: They do have a right to comment that—

Mr. Wildman: Frankly, this discussion has left me rather confused,



because it seems that the ministry is saying two things. In the one case, they are saying, "Don't worry about this amendment, because we don't know of any municipality that has passed the bylaw with more stringent regulations than would be required under this act."

Mr. Scott: For rehabilitation.

Mr. Wildman: For rehabilitation, right. If that is the case, it sounds to me like you are trying to fix something that ain't broke.

Mr. Scott: Yes, there are other things that they have done, though, for setbacks and financial remuneration. We do not want to have two systems of financial remuneration in existence.

Mr. Wildman: Okay. But it seems to me that if that is what you are trying to get at, then the word "conflict" is fine and there is no need to change it, because if they are requiring extra money over and above what you would approve, that would seem to me to be in conflict.

1500

Mr. Scott: Our advice was that there was a problem there and this would be the way to correct that problem. That was where we left it, and I have no more information than that, other than that it is broader and it does encompass the various things.

Mr. Wildman: It seems most undemocratic to me that we would be saying to the ratepayers of a municipality that they cannot prevail upon your elected council to pass regulations under an operating bylaw that would be more stringent in terms of rehabilitation or whatever, in relation to an aggregate operation, than the provincial authority has passed under this act. You are basically, as Mr. McLean said, telling them that once it is zoned for aggregate extraction, they are stuck.

I will use an example specifically. What on earth would this mean for that school and for the people sending kids to that school? That area is zoned for aggregate extraction. The local ratepayers would not be able to go to their school board or their municipal council and prevail upon it to say: "Look, we don't need any more pits. We don't want any more pits right around this school, and you should be able to pass some regulation to prevent this school ending up as an island in the middle of an aggregate extraction sea."

Mr. Scott: That is separate, and that would still be able to be done; you can deal with that under the Planning Act. We are not taking that power away. That is a locational control you are talking about. We are strictly talking about regulatory control.

It is recognizing that there can only be one agency regulating some operation at any given time. You cannot have two agencies regulating the same thing, because there is going to be confusion; no one is going to know who is regulating the property; you are going to have two separate sets of site plans; you are going to have two separate standards on the same property, and we will be implementing one, they will be implementing another. You would get mass confusion.

It just does not make sense to have two sets of regulatory controls on the same property, and that is what we are really talking about: regulatory controls.

Mr. Wildman: Okay, I understand. You are saying that Mono township could change its official plan to deal with that problem?

Mr. Scott: That is right, and we will not touch that.

Mr. Wildman: By changing the official plan they could prevent new pits from starting across the road, which is one of the things they are concerned about.

Mr. Scott: Yes, they could.

Mr. Wildman: But what about the pits that are already in operation? Surely if you had a kid in that school, you would want the municipality to be able to put additional restrictions on the operations around that school?

Mr. Scott: We do have that type of power in this legislation from a regulatory standpoint. That is why we feel comfortable with this particular clause, because we have the power to put conditions on the licence. Mr. Ballinger has talked about that earlier; how, after the OMB came down with the decision on this new licence near that school, we went and put more stringent conditions on, many more and much more onerous on an individual basis as well. The standard was upped considerably by us.

We are still one regulatory authority. That is the approach we would be taking. Under this new act, any property out there could have new conditions put on it as circumstances warrant. We could come along and when we got comments from the municipality about problems and so forth, the minister could put additional conditions or specify that new things be entered in the site plan to rectify those types of problems.

We are merely trying to recognize that there has to be one agency and one inspection force out there doing this regulatory function. That is all we are trying to do. We are not trying to change the zoning or the official plan powers of the municipalities.

Mr. McLean: I have a gravel pit on a concession road that has been there 20 years, so to speak. I do not pay anything towards the municipality for fees or for anything. A new gravel pit wants to start up across the road in later years. The municipality says: "Just a minute. We do not mind you starting up, but we have a road here to maintain and we would be interested in your paying 50 per cent of bringing that road up to a standard that would save the dust from the people who live there. It is going to cost maybe \$100,000 or \$150,000." Certainly, the new gravel owner is not very pleased. What right has the municipality to assess both owners? I presume they do not have any.

Mr. Scott: They do not have any right today as far as I am aware.

Mr. McLean: But they made an agreement with the new owner to service the road and bring it up to standard.

Mr. Scott: That is a private agreement between the two parties.

Mr. McLean: Under this act, could that happen tomorrow?

Mr. Scott: There is always the possibility of those things happening. This act does not specify that it is supposed to happen or anything of that nature. The financial remuneration from the annual tonnage licence deal would be new money going to the municipality that will allow it to have



new funds for doing whatever it wants to do. I assume the municipality may want to use some of that to fix that and other roads or to do other things in the municipality.

But this particular section was not designed to address that type of problem per se. That type of problem with an existing licensed property is going to continue because it is something that was done many years in the past. It may have been there for 20 or more years. Who knows? When you are dealing with the new operation, that is a different thing. You can bring it in in a more co-ordinated manner. But I doubt the municipality would have the power to do anything about that existing one in getting it to pay for the new road today.

Mr. McLean: I know there are in the works right now some companies that are agreeable to paying 25 per cent of a road that should be brought up to standard. Under this act, there is no way they will want to agree to do anything such as that in the future because of—

Mr. Ballinger: I am a little afraid we are going to start going all over the place here and get off the point.

Mr. Chairman: I am afraid we have already started doing that.

Mr. Ballinger: Let me tell you that in my own community, all of the aggregate industries are currently meeting with my council to develop a development road that will bypass the hamlet of Goodwood. This act has absolutely nothing to do with that. The municipality can cut its own deal outside the realm of the Aggregate Resources Act, which it is attempting to do with a bypass road. It becomes strictly the will of the community and the industry to sit at the table and negotiate a deal. It is happening in many places in Ontario. This act will not preclude that from happening.

Mr. Chairman: That is correct.

Mr. J. M. Johnson: Just for clarification, if a municipality is faced with opening up a pit and the Ontario Municipal Board lays down certain conditions, are you saying you can attach other conditions if the municipality so wishes?

Mr. Scott: Yes, or we wish.

Mr. Ballinger: For clarification, in the the Mono-Mulmur decision the Ontario Municipal Board attached seven conditions. The minister attached an additional six. All were environmentally related. There is a dust control mechanism on the school site now that is monitored daily as an example. Mr. Wildman, it goes back to your point about the concern for the children's safety. Those six conditions that are attached by the minister all relate to the safety, the benefit and the health and welfare of the children. The operator must meet those criteria or else the licence will be revoked by the minister.

Mr. J. M. Johnson: Just further on that, you will attach these conditions at the request of the municipality?

Mr. Scott: No. Well, it all depends on what the condition is. But yes, in discussions with the various agencies, the municipality and interest

groups, we normally put on appropriate conditions. Those types of conditions you are talking about are normally the types we do indeed put on.

Mr. J. M. Johnson: Just as an example, if a pit opens and after six, eight or ten months of operation it is brought to the attention of the municipality that there are certain concerns, can the municipality come at that point in time and request consideration?

Mr. Scott: Yes.

Mr. J. M. Johnson: There is not a time frame.

Mr. Scott: No.

Mr. J. M. Johnson: It may be four years into it?

Mr. Scott: With this new act that is possible; with the old act that was not possible.

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Mr. Chairman: Any further comments? Ready for the question?

Mr. Wildman: Just one question; I will not prolong it. Under this act as it is currently amended, do you think it would be possible for the township of Mono to put a condition upon any new licence across the road—that is, any extension of the aggregate operations in the area—that would require any new developer to buy out the school site and build a new one?

Mr. Ballinger: Let me jump in here because I do not think that is your role. First of all, let me just rehearse it with you. The process is that the licence application was referred to the board by our minister. It is at the board and the hearing where the community or the school board makes representation to make its case. That is always, in Ontario, under the planning process in Ontario, and not necessarily in Mono.

The board then rules on its findings and the expertise that is put before it and submits the findings to the minister. It is then that the minister, as you know, looks at those conditions and those decisions and makes a further decision. Certainly, they have every right under the Planning Act to make that proposal and to make their case before the board.

Mr. Chairman: Any further discussion? We have been talking to an amendment to subsection 66(1) put by the government.

Mr. Wildman: Excuse me. I just thought of one other thing that I want the Liberal members to consider.

Mr. Chairman: This is the very last of the very last.

Mr. Wildman: Yes, it is. We had a lot of debate in the House about local option not too many months ago. I want all the Liberal members to keep that in mind as they vote on this amendment.

Mr. Chairman: Those in favour of the amendment? Are there any members of the committee in favour of the amendment to subsection 66(1)? Opposed?

Motion agreed to.



Mr. Wildman: I need some legal advice on the next one, on our amendment. I wonder if it is in order now that we have passed this amendment. Perhaps I should just put it and let you rule it out of order, if it is.

Mr. Chairman: Legal counsel should be able to tell you if it is in order.

Mr. Yurkow: Are you looking for an opinion from me?

Mr. Chairman: Are you asking for an opinion from counsel?

Mr. Yurkow: In my view, it covers the same subject matter that was debated.

Mr. Wildman: I am talking about putting in the word "conflict," which of course is what we were arguing about before.

Mr. Cordiano: We are going to vote it down.

Mr. Wildman: Okay; I will not put it.

Mr. Chairman: Shall subsection 66(1), as amended, carry? Carried. Subsection 66(2)? Carried.

Mr. Ballinger: I have cross-reference clarification.

Mr. Chairman: Mr. Ballinger moves that subsection 66(3) of the bill be amended by striking out "conflicts with" in the last line and inserting in lieu thereof "differs from."

Same vote as on subsection 66(1)?

Motion agreed to.

Mr. Chairman: Shall subsection 66(4) carry? Carried. Does section 66 and all its subsections, as amended, carry?

Section 66, as amended, agreed to.

Section 67:

Mr. Chairman: Shall clauses 67(a) to 67(e), inclusive, carry? Carried.

Is there a government amendment?

Mr. Ballinger: Yes. It is an addition, but again a cross-reference that we dealt with in the subsection 14(4) and subsection 24(3) amendments.

Mr. Chairman: Mr. Ballinger moves that clause 67(f) of the bill be amended by striking out "and manner" in the fourth line and inserting in lieu thereof "manner and purposes."

Motion agreed to.

Mr. Chairman: We have an additional amendment with respect to a clause called 67(fa).

Mr. Ballinger moves that section 67 of the bill be amended by adding thereto the following clause:

"(fa) requiring and providing for the records and information that must be kept and returns that must be filed by municipalities to which fees are disbursed."

Motion agreed to.

Mr. Chairman: Shall clauses 67(g) to (i), inclusive, carry? Carried.

Mr. Ballinger moves that section 67 be amended by adding thereto the following clause:

"(ia) exempting a class or classes of aggregate permittees from the payment of royalties."

Mr. Ballinger: It is a cross-reference to the amendment clause 45(5)(b).

Mr. Chairman: Shall clause 67(ia) carry? Carried. Shall clauses 67(j) to 67(m), inclusive, carry? Carried.

Mr. Ballinger moves that section 67 of the bill be amended by adding thereto the following clause:

"(na) prescribing the size and content of signs required under subsection 11(2) and governing the placement thereof."

Mr. Ballinger: It is an addition, but a cross-reference too.

Mr. Wildman: Just a comment on this: Would it not also require, when the bill is redrafted, to add in the other sections where we have moved amendments requiring signage that was not originally in the bill?

Mr. Ballinger: It will be done, just for you, Bud.

Mr. Chairman: Shall clause 67(na) carry? Carried.

Mr. Fleet: Is that automatically done?

Mr. Yurkow: It is not automatically done, but I will take the instructions of the chairman to do so.

Mr. Ballinger: It was almost automatically done, Bud.

Mr. Fleet: Now it is.

Mr. Chairman: Shall subsection 67(o) carry? Carried.

Section 67, as amended, agreed to.

Section 68:

Mr. Chairman: Shall subsection 68(1) carry?

Mr. Wildman: No.



Mr. Fleet: We wondered if you might say that. See, he voted on all the others.

Mr. Chairman: Those in favour of subsection 68(1)? Those opposed? Carried. Shall subsection 68(2) carry? Carried. Shall subsection 68(3) carry? Carried. Shall subsection 68(4) carry? Carried. Shall subsection 68(5) carry? Carried.

Shall section 68 carry?

Those in favour?

Those opposed?

Mr. McLean: Just a minute: I would like a clarification on subsection 68(4). "The minister, if the matter appears to warrant it, shall serve notice of a proposed relief under subsection (1), including reasons therefor, upon the clerk of the local municipality..." In other words, the minister can say to that local municipality, "I want a change; this is what it shall be." What recourse does that municipality have?

Mrs. Grier: Zippo.

Mr. Ballinger: Mr. Scott, please clarify that, so we do not get all over the place with this.

Mr. Scott: What we are trying to do is indicate that if there is such a relief being granted for some reason, such as a fence through the Boyne River because the man owns on both sides of the river, or whatever, we would be notifying the municipality. That is the type of relief we are talking about. Anything that is very onerous and significant would be a different process.

Mr. Wildman: The question is, could they not appeal to the Ontario Municipal Board if they had an objection to—

Mr. McLean: If the municipality does not agree with what the minister has done, what recourse does it have?

Mr. Scott: They have a 30-day comment period.

Mr. Wildman: So they can comment, and the minister can say, "Thank you very much."

Mr. Scott: Historically, the minister has not done that.

Mr. Fleet: There is also recourse to the Supreme Court of Ontario, because there is an obligation on the minister to make a determination about the public interest in the first subsection, so it is not a total absence of recourse.

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Mr. Ballinger: I like to think my role as an MPP is not redundant, either.

Mr. McLean: Not for a couple of years.

Mr. Ballinger: Certainly, we act on behalf of our municipalities on a daily basis.

Mrs. Grier: Mr. McLean points out not for a couple of years.

Mr. Ballinger: Well, I have news for him, Mrs. Grier.

Mr. Chairman: Has subsection 68(4) been cleared to your satisfaction, Mr. McLean?

Mr. McLean: Not really, but it is the best I am going to get.

Mr. Chairman: I was on the point of calling section 68 in its entirety.

Section 68 agreed to.

Section 69:

Mr. Chairman: Clause 69(1)(a)? Carried. Clause 69(1)(b)? Carried.

Subsection 69(2)? There is a question.

Mr. J. M. Johnson: I have a problem with that. When the existing licence expires at the end of three months, after the new act comes into force, the bill is sound as to whether existing conditions would carry forward into the new licence?

Mr. Scott: Yes, we talked about that this morning. It is the same basic situation. If the licence has conditions that are operative and are able to be enforced, they would be carried through as they are. If it refers to some agreement between two other parties—MNR is not one of those parties—and they have been found to be unenforceable, we would then have to go back to the parties, the municipality and the company, and work out new conditions for that property that are going to be reasonable to address the concerns the original agreement was trying to address.

That is the only way we can do it. It is a legal problem and it is the municipality and the company at fault, not MNR per se. I know the circumstance you are talking about. We are going to try and work between the two parties and get the agreement established where new conditions will address the issue.

Mr. J. M. Johnson: There is no merit in having an amendment that would allow the municipality to appeal again to the OMB?

Mr. Scott: They always have that right, anyway. If they feel there is some problem with an original agreement with the OMB, they could take it back to the OMB to have it rectified.

Mr. J. M. Johnson: So it does not require any change?

Mr. Scott: Not that I am aware of here. We have looked at that issue and we believe we can address that through our process.

Mr. Chairman: Is that okay, Mr. Johnson?

Mr. J. M. Johnson: Yes.



Mr. Chairman: Shall subsection 69(2) carry? Carried. Subsection 69(3)? Carried. Subsection 69(4)? Carried. Subsection 69(5)? Carried.

There is proposed amendment to subsection 69(6) by the government side.

Mr. Ballinger moves that subsection 69(6) of the bill be struck out and the following substituted therefor:

"Ss 7(3)(a-c), 9-12, 60 do not apply

"(6) Clauses 7(3)(a), (b) and (c) and sections 9, 10, 11, 12 and 60 do not apply to applications made under subsection (2) of this section."

Mr. Ballinger: This is a housekeeping correction. Mr. Scott?

Mr. Scott: I explained this when we went through the original parts earlier. This is required because we have a three-month period for phasing in the new licensing for all of these existing 2,700 or more licensed properties and we have to have a mechanism to bring them all in together at one time. Because they are all existing properties, we are basically bringing them under the new legislation, and in some cases they will have some new conditions as we have just talked about, but we cannot have all the clauses about advertising and so forth required, because they are in essence existing properties and may have been for many years.

Mr. Chairman: Any further clarification or discussion?

Motion agreed to.

Mr. Chairman: Shall subsection 69(6), as amended, carry? Carried.

Shall clause 69(7)(a) carry? Carried. Clause 69(7)(b)? Carried. Shall subsection 69(8) carry? Carried. Subsection 69(9)? Carried. Subsection 69(10)? Carried. Subsection 69(11)? Carried. Subsection 69(12)? Carried.

There is a notice of an amendment to subsection 13 by the government side.

Mr. Ballinger: This is again a housekeeping and cross-reference amendment.

Mr. Chairman: Mr. Ballinger moves that subsection 69(13) of the bill be amended by adding at the beginning thereof "Subject to sections 20 and 43".

Is there any discussion?

Motion agreed to.

Mr. Chairman: Shall subsection 69(13), as amended, carry?

Carried.

Shall subsections 14 through 16 carry? Carried.

Shall section 69, as amended, carry?

Section 69, as amended, agreed to.

Section 70:

Mr. Chairman: Mr. Ballinger moves that section 70 of the bill be struck out and the following substituted therefor:

"Non-application of Ss 10, 11(2-9), 60

"(1) Section 10, subsections 11(2) to (9) and section 60 do not apply to an application for a licence in respect of a site for which a licence under the Pits and Quarries Control Act expired under subsection 69(2) if the application is made after the three-month period mentioned in subsection 69(2) but within the two-year period after this act comes into force.

"Waiver of S 9

"(2) The minister may waive the requirement for a report under section 9 for any application under subsection 1.

"Noncompliance with zoning bylaws

"(3) The minister may issue a licence in respect of an application under subsection 1 whether or not all relevant zoning bylaws are complied with."

Is there any discussion?

Motion agreed to.

Mr. Chairman: Shall subsection 70(1), as amended, carry?

Carried.

Shall subsections 70(2) and 70(3) carry? Carried.

Shall section 70 in its entirety carry?

Section 70, as amended, agreed to.

Mr. McLean: Why does the minister need all that power? He can override pretty near anything in this act.

Mrs. Grier: It is something we have debated long and hard and lost all the way through.

Section 71:

Mr. Chairman: Shall subsections 71(1) through 71(3) carry? Carried.

My next notice of an amendment is to subsection 71(4), a government amendment.

Mr. Ballinger moves that subsection 71(4) of the bill be amended

"(a) by striking out 'section 10' in the second line of clause (a) and inserting in lieu thereof 'subsection 13(5a)'; and

"(b) by striking out 'section 10' in the second line of clause (b) and inserting in lieu thereof 'subsection 13(5a).'"



Mr. Ballinger: Again, it is a housekeeping and cross-reference modification.

Motion agreed to.

Mr. Chairman: Shall clauses 71(4)(a) and 71(4)(b), as amended, carry? Carried.

Mr. Chairman: Shall subsection 71(5) carry?

Mr. McLean: Mr. Chairman, subsection 71(8) has had a lot of amendments to it. Is this still subsection 5 in accordance with the amendments that have been made in subsection 8?

Mr. Chairman: I will have to defer to the experts on that one.

Mr. Fleet: Can we at least finish off subsection 71(4), as amended? I do not think we have passed that yet. I do not think that is a problem for Mr. McLean's question.

1530

Mr. Chairman: Shall subsection 71(4), as amended, carry? Carried. You have a question with respect to subsection 71(5)?

Mr. McLean: There have been four amendments in subsection 8. I am wondering now if this section complies with the amendments that have taken place in subsection 8?

Mr. Ballinger: If it is not, then this lawyer, David Searle, representing the ministry is in a lot of trouble, but we have the assurance that yes, the cross-referencing all complies.

Mr. Chairman: Shall subsection 71(5) carry? Carried. Shall subsection 71(6) carry? Carried. I have a proposed government amendment to subsections 71(7) and (8).

Mr. Ballinger: I have an amendment. It is housekeeping and a slight addition.

Mr. Chairman: Mr. Ballinger moves that subsections 71(7) and (8) of the bill be struck out and the following substituted therefor:

"Ss 7(3)(a-c), 9, 11(2-9), 12, 60 do not apply

"(7) Despite subsection (1), clauses 7(3)(a), (b) and (c), section 9, subsections 11(2) to (9) and sections 12 and 60 do not apply to applications made under subsection (4).

"Non-application of ss 11(2-9), 60 and waiver of 9

"Despite subsection (1), subsections 11(2) to (9) and section 60 do not apply to an application for an established pit or quarry made during the two-year period next following the day of the designation."

Is there any discussion?

Mr. Wildman: Can you answer for me the significance of adding

section 60 in here?

Mr. Ballinger: Dale, please.

Mr. Scott: Yes. It is basically to take care of the unorganized territory where we had not covered that before. It was an omission on our part of that particular circumstance where someone could make application in that area after the three-month period, and had been operating before, but for one reason or other we did not know about him. Actually in that area it is even more important because there are probably circumstances that would get by. In the old act we have a circumstance where, "Once a pit, always a pit," and we are trying to restrict it. If they do not come in within two years, it is no longer a pit and so they have lost all their rights. That is what it is all about.

Mr. Wildman: All right.

Mr. Chairman: Did the government whip want a second to—

Mrs. Grier: No, we agree with the amendment.

Mr. Chairman: Shall subsection 71(7), as amended, carry? Carried. Shall subsection 71(8), as amended, carry? Carried. Shall subsection 71(9) carry?

Mr. Wildman: Just a second. I have a question. What is the reason for this?

Mr. Chairman: In the absence of the PA, I will call on Mr. Scott.

Mr. Scott: It is in the two-year period. Basically we are grandfathering that existing property in, and so the report that will be required on a new property will not be required because this is an old property. You would be treating that property differently from any other property if you were to require that.

Mr. Wildman: All right.

Mr. Scott: Is that okay?

Mr. Chairman: Shall subsection 71(9) carry? Carried. Subsection 71(10)? Carried.

Section 71, as amended, agreed to.

Section 72:

Mr. Chairman: Shall subsection 72(1) carry? Carried. Clause 72(2)(a)? Carried. Clause 72(2)(b)? Carried. Clause 72(2)(c)?

Mr. Wildman: Just a second. This may sound like a funny question, but what is the reason for the difference? It is six months in the first two and 10 months in the third one, in (c).

Mr. Scott: This has to do with aggregate permits, and normally aggregate permits last for only one year. They are presently called quarry permits, and they last only one year. Inco has one for five years, I think, in Sudbury because of a mine being dependent solely on that source of backfill to



make it safe for the workers.

There are a couple in the Great Lakes: the one of McLean's and the one down at Niagara, I think, are for five-year periods, but all the rest are one year.

It fits in with section 69, where, in keeping with the requirements for phase-in and all that, the six months seem to blend in better.

Mr. Wildman: Why the 10 months for the other—Section 36?

Mrs. Grier: Six months for the others and 10 for the permits.

Mr. Wildman: You have explained why you think six months is good for the others. Why is it not good for the permits?

Interjections.

Mr. Wildman: I think Mr. Scott has an answer here.

Mr. Scott: I am sorry. We do have quite a few sections in this act, and even though I was involved in drafting it originally, or getting the intent down, I do have a short memory on some of these little points.

In terms of this particular section, it has to do with the aggregate permits being a maximum of one year, and the 10 months, we felt, would cover the phase-in. So we would not have to go and process a whole bunch of new aggregate permits. We want to let them die their natural—

Mr. Wildman: At the end of the first—

Mr. Scott: We want to let them die their natural death, basically. So we do not go out and do a whole bunch of work for basically no end result. It would take us longer to process it than we would actually benefit.

Mr. Chairman: Shall clause 72(2)(c) carry? Carried. Shall subsection 72(3) carry? Carried.

Mr. Fleet: Do we not have to cover all of subsection 72(2)? You are doing it everywhere else.

Mr. Wildman: There are no amendments.

Mr. Chairman: There were no amendments. We did clauses 72(2)(a), (b) and (c). I think it is all right. Shall subsection 72(4) carry? Carried.

Section 72 agreed to.

Section 73:

Mr. Chairman: I believe I have a proposed NDP amendment for subsection 73(1).

Mrs. Grier: Yes, indeed.

Mr. Chairman: Mrs. Grier moves that subsection 73(1) of the bill be amended by striking out "natural edge" in the third line and inserting, in lieu thereof, "brow."

Mrs. Grier further moves that subsections 73(2) and (3) be struck out and the following substituted therefor:

"Idem

"(2) No person holding a licence for a pit or quarry under the Pits and Quarries Control Act when this act comes into force and who is issued a licence for a pit or quarry under this act shall operate a pit or quarry nearer to the brow of the Niagara Escarpment than 90 metres measured horizontally.

"Determination of brow

"(3) For the purpose of subsections (1) and (2), the brow of the Niagara Escarpment shall be determined by the Minister of Municipal Affairs in consultation with the Minister of Natural Resources and the Niagara Escarpment Commission."

Mrs. Grier: Mr. Chairman, if I may speak to this. I have to say that I think the lack of imagination or initiative shown by the ministry on this section is about one of the most disappointing things of the whole legislation, which on the the whole is not bad legislation. When you go back to the Pits and Quarries Control Act, you find that the wording in subsection 73(1) is exactly taken from the Pits and Quarries Act. The only thing they have eliminated is the Amabel and Lockport formation and they have more properly described it as the Niagara Escarpment, but that is all.

There seems to be no recognition of the fact that since the Pits and Quarries Control Act was enacted, there was a lot of work done by the previous government and by this government to put in place the Niagara Escarpment plan. That plan contains within it a definition of what the Niagara Escarpment is that is much more appropriate and now commonly-accepted and used in municipalities all across the escarpment. They have a definition in the Niagara Escarpment plan for escarpment-brow edge, which is as follows: "The uppermost point of the escarpment slope or face." It may be the top of a rock cliff or where the bedrock is buried, the most obvious break in slope associated with the underlying bedrock. Nowhere in the Niagara Escarpment plan is the phrase "natural edge" used. It is a phrase that was in the Pits and Quarries Control Act. It is an anachronism that is no longer current precisely because a precise definition was needed. That definition is agreed to and put in the Niagara Escarpment plan. To repeat "natural edge" in this act is a serious weakening of this act.

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Further, surely members will realize that the Niagara Escarpment plan is administered by the Minister of Municipal Affairs. To leave it, as section 73 does, to the Minister of Natural Resources to make the determination as to what the natural edge will be does not make any sense at all. That is why our recommendation for subsection 3 is that the determination of the brow—and even if you do not accept the logical change to brow, it ought to be that the determination of the natural edge—should be made by the Minister of Municipal Affairs in consultation with the Minister of Natural Resources.

But to cut out the Minister of Municipal Affairs from any reference in the act and to hark back to that obsolete definition in the Pits and Quarries Control Act is, I think, a very serious omission in this legislation. I do



hope that the parliamentary assistant will be prepared to consider it and to accept the amendment we have moved.

Mr. Ballinger: Regarding the discussion we have had throughout the act as it relates to the definition of "brow" versus "natural edge," obviously I am going to defer this comment to Mr. Scott to again reiterate from the ministry's point of view why they have arrived at that decision. Dale, would you mind commenting, please?

Mr. Scott: I went through this the other day, but my argument is still the same one. After discussing it with the Ministry of Municipal Affairs and the Niagara Escarpment Commission staff, their plan actually does have "brow equals edge." From that standpoint, we felt that it was better to stick with "edge" because that is the term that was used in licensing all the various properties that are presently there.

That terminology is consistent with what the NEC has been using as equal to "brow," as well. We do not see a conflict there between the two. We see it as being synonymous for all intents and purposes. We feel that it should be carried forward with the same type of delineation and the same type of definition as it presently is in the old Pits and Quarries Control Act to make sure that we do have uniformity, that everybody knows what we are talking about and that we do not try to change the process or the definition in midcourse to add extra confusion.

You have also included a few other aspects in your amendment. We feel the Minister of Natural Resources must retain the authority to determine the natural edge because he or she is responsible for the act and for the administration and regulation thereafter. In terms of the co-operation between the Niagara Escarpment Commission, our ministry, Municipal Affairs and so forth, I believe we are on record as indicating that we have a co-operative approach to dealing with issues between the various parts and agencies of government.

That approach is still binding on us. In terms of cabinet itself, anything that was in conflict or was a disagreement between the various parties in those agencies most certainly would be discussed outside of our own ministry. It would be brought to the attention of other parts of government to make that determination if there were some conflict. We believe that this approach and the consultative approach that exists can overcome the concern you are trying to address through your amendment.

Mrs. Grier: If there is a difference of opinion between the Ministry of Municipal Affairs, representing the Niagara Escarpment Commission and the Ministry of Natural Resources as to where the edge is—You must recognize that in the escarpment it is not necessarily a direct cutoff edge; the slope varies. I have been through this at the municipal level: "What is the top of the bank?" The developer says it is here and the conservation authority says it is there, and there is great conflict. You are telling me that if there is a difference of opinion, in the case of you as the proponent of the aggregates industry and maybe the Minister of Municipal Affairs as the proponent of the NEC, the Ministry of Natural Resources is going to prevail?

Mr. Scott: No. What I am saying is—and I think MNR is a proponent of the Niagara Escarpment Commission as well—we are all part of the same government. Our ministry is the agency that is actually purchasing the land for the Niagara Escarpment Commission parks system and so forth along the escarpment. We are quite closely involved with them. I actually do not think

MNR is the proponent for the aggregate industry. We are merely the regulatory agency that is looking after that particular industry or that particular interest to ensure there is a regulatory mechanism to control the impacts in an appropriate manner.

I do not agree with your assertion that the minister would necessarily overrule those other agencies. What I am saying is: If there is some conflict, the minister could take this to cabinet, I assume, and discuss it there.

Mr. Cordiano: Is this a personality problem, or what is the problem here?

Mrs. Grier: I think it is significant, Mr. Chairman, that all of the groups particularly involved in the Niagara Escarpment—the people who appeared before the committee, the brief we got today from Protect Our Water and Environment Resources in your own riding—are all expressing concern about the decision of the Ministry of Natural Resources to go with this particular definition and to leave the power exclusively with the Minister of Natural Resources. Even if you will not change "natural edge"—and I agree, perhaps we will see whether an argument can be made that edge and brow are the same—I really regret that you would not put in that there would be consultation with the Minister of Municipal Affairs before this edge is determined.

Mr. Scott: The only thing I can say is that we have discussed it with the Niagara Escarpment Commission and the Ministry of Municipal Affairs and the senior planner—I believe that is his job title—for the Niagara Escarpment Commission. He indicated to us that our explanation clarified the circumstance for him.

Mr. Wildman: I will not go on at length. I just want to say that I do have some very serious difficulty with the comment Mr. Scott made about the role of the ministry. The Ministry of Natural Resources is a very schizophrenic operation. I do not mean that in any kind of critical way at all. The fact is, the ministry, in all of its operations, has two roles. One is the development of the resource—

Mr. Ballinger: Management of the resource.

Mr. Wildman: The word "management" takes into account these two roles, the development of the resource and the conservation of the resource, as well as the protection of the environment. Those two, along with the protection of the environment, are what make this organization so schizophrenic.

The unfortunate thing is that in some cases those two cannot be put together, whether it is in forestry or in aggregate. To say that you are simply a regulatory body is just not correct. I will admit, I have a lot more experience with the forestry branch of the ministry than I have with your branch, but in fact one of the roles of your ministry is to maximize the return of the exploitation of the resources to the taxpayers of this province, as well as to conserve those resources and protect the environment. You have all of those roles to fulfil. To simply say you are just regulatory is, in some way at least, I think, to escape from the reality of the situation.

Mr. Chairman: The view of the chair is that if there is a reaction to this comment it should be from the parliamentary assistant.



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Mr. Ballinger: Mr. Wildman has certainly registered his opinion on the record and I do not think any further debate is necessary.

Mr. Chairman: Is there any further comment with respect to the proposed amendment?

Those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: Shall subsection 73(1) carry?

Carried.

Subsection 73(2)?

Carried.

Subsection 73(3)?

Carried.

Section 73 agreed to.

Section 74:

Mr. Chairman: Shall section 74 carry?

Mr. J. M. Johnson: Would you please explain this to me: "If the location of a pit or quarry for which a licence or wayside permit has been issued contravenes a zoning bylaw, the licence or permit prevails and the bylaw does not apply to the site." It refers back to section 27 and subsection 69(3). If, for example, it is a residential area the minister could overrule a zoning bylaw and say a licence could be issued?

Mr. Ballinger: I am sorry Mr. Johnson was not with us yesterday, but we included an amendment, as it relates to wayside pits, recognizing the fact of the residential or the developed areas. The purpose of this particular section, I think you would agree—There are many examples in Ontario where for a specific road project to go through an official plan amendment, a rezoning application and a public hearing if necessary for something that is temporary, as a wayside permit is, would just defeat the whole purpose of the process. We are talking about a temporary land use. Of course, with all of our amendments we have encouraged for the temporary a shorter time period and a fewer number of permits to be issued on a specific site, all in the encouragement of reinforcing the position of temporary land use.

Mr. McLean: It is covered in section 27. Why do have to have it here?

Mr. Ballinger: That is just in case you missed it in section 27.

Mr. McLean: I did not miss it, but it is there.

Mr. Ballinger: We are ready to proceed.

Mr. Chairman: All ready for the vote? Those in favour of section 74?

Section 74 agreed to.

Section 75:

Mr. Chairman: Shall clause 75(a) carry?

Carried.

Clause 75(b)?

Carried.

Section 75 agreed to.

Section 76:

Mr. Chairman: Shall subsection 76(1) carry?

Carried.

Shall subsection 76(2) carry?

Carried.

Section 76 agreed to.

Mrs. Grier: Before we get to section 77, I have been wrestling with where would be an appropriate place to insert my concern that the intervenor funding legislation that was adopted by the last session of the Legislature ought to incorporate hearings before a board under this act. Subject to direction, it would seem to me that a section at this point would be the appropriate place to do it.

Mr. Fleet: Might I make a suggestion, that we finish off sections 77, 78 and 79 and then go back and place it?

Mrs. Grier: Wherever.

Mr. Fleet: The numbering system is now going to be rejuggled anyway.

Mr. Chairman: Are we in agreement to this proposal by Mr. Fleet to finish off the three remaining sections?

Mr. Wildman: Just with the proviso that I think prior to passing section 78 we should have some discussion on section 5 which was stood down and relates to this.

Mr. Chairman: We still have section 5 open and we have clause 17(1)(c).

Mr. Ballinger: They are on the record as being ones we will discuss. They were stood down.

Sections 77 to 79, inclusive, agreed to.

Mr. J. M. Johnson: You do not think this could be changed to the Vince Kerrio Aggregate Resources Act?



Mr. Chairman: Are you proposing this as an amendment?

Mrs. Grier: Let's take the aggregate control act back into control rather than—

Mr. Ballinger: The Dale Scott effigy act.

Section 17:

Mr. Chairman: Would the committee be receptive to considering clause 17(1)(c)? I will reread it. It was an NDP amendment relative to clause 17(1)(c).

Mr. Wildman moves that clause 17(1)(c) of the bill as amended by the government motion be further amended by inserting after "located" in the second line "and by adjacent municipalities."

The government question, as I recall it, was around the word "adjacent" as opposed to "any other interested."

Mr. Wildman: That is right. We had introduced "any other interested." The discussion was that it might be more appropriate to use the word "adjacent" because that would get away from saying that any municipality in Ontario could comment. The parliamentary assistant was going to consult to determine whether that would be acceptable.

Mr. Chairman: Can we have a report back on that consultation?

Mr. J. M. Johnson: Would you read the full amendment?

Mrs. Grier: The original amendment was: Mr. Wildman moves that clause 17(1)(c) of the bill as amended by government motion be further amended by inserting after "located" in the second line "and by any other interested municipalities." In discussion, we agreed to accept a change to "by adjacent municipalities," if the parliamentary assistant could get permission.

Mr. Wildman: Mr. McLean suggested "adjacent."

Mrs. Grier: We could always say "the joint amendment" at that point.

Mr. Chairman: This is Mr. McLean's amendment to the amendment.

Mrs. Grier: Which we accepted.

Mr. Ballinger: We met on a couple of occasions over this particular one. We talked about it, then wanted to go away and think about it some more and come back. Obviously, in Dale, David and John's case, from the staff point of view they wanted to chat among themselves about the effect of the proposed amendment to the amendment. I am sorry to say that in the discussion we had in trying to look at the ramifications versus the intent, it became quite a quagmire in sorting out the process.

I wonder, Dale, if you would not mind highlighting the concerns you have from a staff point of view when you start talking about "adjacent." We have already had that discussion earlier about "What do you mean by 'adjacent'?" A similar problem is especially on licence applications: Are we going to get into an intermunicipal battle? Quite frankly, I can see it happening myself, based on my own experience between Uxbridge and a neighbouring community, and there is some concern about that.

Mr. Scott: Our concern lies in the fact that if you get various municipalities in the legislation all having the right to comment, it makes it difficult for our minister and for each of them to determine who has the higher priority and which comments take precedence and which comments should be given greater weight.

We do have this situation in a couple of areas right now under the present act, where various municipalities feel that because trucks go through their municipality or whatever else, once you get into some other municipality—It is like a milk truck; it picks milk up here and it goes through various municipalities. We have a problem with recognizing that their comments would necessarily override the comments of the municipality that actually is the recipient of the pit.

From that standpoint, we feel it would do nothing but create conflict, as we have in this one case at present where the two municipalities are arguing back and forth. The other thing is that by highlighting it here, we have heard that some municipalities feel they should be getting part of the money even though the pit is not in their area. Where do you draw the line?

I guess my concern is that if the pit is in your area most of the impact is in your area and you are going to be the one that rightfully deserves any financial remuneration because of that pit being there. We cannot really carry it all over the province and redistribute the money and redistribute the significance of the comments beyond the one municipal boundary.

We can still get comments from other municipalities. There is nothing restricting that, but by putting it in the act, we felt we were highlighting and giving credence to the fact that those areas have some special status equal to that of the municipality that is the recipient or the host of that pit.

Mr. Wildman: With due respect, the explanation provided by Mr. Scott does not speak to the issue directly. This section does not deal with the royalties and the fees. This section simply deals with having the minister consider. It does not deal with overriding, as Mr. Scott said. All it says is that the minister will consider. He can consider and say: "Thank you very much for your opinion. I don't agree with you." It does not override.

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In response to the last comment, I think that in the case of a municipality similar to the one Mr. McLean described in suggesting this change, where the pit is just over the town line in one township but all the roads are in the neighbouring township, that municipality should, in fact, have some status and should be recognized as having some status.

Mr. Scott: We could still accept their comments; there is nothing stopping us. However, the planning process recognizes only the municipality that has planning jurisdiction. We feel we are on safer ground in writing our legislation if we stick with the normal jurisdictional control municipalities have within their own area and rest on that, rather than rest on some arbitrary boundaries that would be difficult to delineate and where it would be difficult to determine whether the township on the west side had more significance than the township on the east side of the one where the pit actually existed.

We would be getting into a situation where you could end up in a no



man's land where you have all kinds of comments. You could have five different municipalities encircling one municipality that has a pit in it. All we are doing is opening it up in a legal forum where we have them delineated, where we have to send everything to those municipalities on every issue. It would basically bog down in bureaucracy, I would think.

Mr. Fleet: I will be very brief. Mr. Scott has touched on it. There is absolutely nothing in the act, absent the amendment proposed, that stops an adjacent municipality from absolutely bombarding the minister, if it wants to, with comments, and there is nothing that stops the minister from taking those into account.

Mr. Chairman: Certainly they will know about it.

Mr. J. M. Johnson: Mr. Fleet, you must live in the city or you would not make a comment like that, because the municipalities that are adjacent and affected do have concerns, and truck groups are one of them.

Mr. Fleet: But they can make those comments, is my point.

Mr. J. M. Johnson: Exactly. In my area, for example, the pit could be in an area and south of a truck route that could take you through Halton, and I am sure the people in Halton would have some concerns. We could add another amendment: "and by any other adjacent, affected municipality." You have mentioned five municipalities around a pit. The only ones who should be addressing it are the ones who would have the trucks going through per se, and that would only be the one area; certainly, they are not going out in five different directions.

I really do feel that it is a major concern for the people; that it could be as much of a concern for the people in an adjacent municipality if the truck traffic created a problem. To give them an input into whether it should be route A, B or C certainly is a consideration. I would hope the ministry would give consideration to this amendment to the amendment, if it wished, "and by any other other adjacent, affected municipality."

Mr. Chairman: Are you making an amendment to put "affected" after "adjacent"?

Mr. J. M. Johnson: Yes. It would just mean a municipality that would be affected by the truck route per se.

Interjections.

Mr. J. M. Johnson: That would narrow it down somewhat, would it not, Mr. Scott?

Mr. Chairman: Mr. McLean wanted to make a comment so I will allow that opportunity.

Mr. McLean: I think it is a very legitimate comment, too, because I have that very case where the small municipality is going to allow another pit to open. The municipality that the roads are in, that they travel through, usually has a five-year or a 10-year road program. If they have no say or do not know there is another pit going in and they have no right to comment on it, then I think that is not good planning on the part of the ministry. If the adjoining municipality is not notified, then it has no way of knowing what is going in so it can plan its road programs for the years ahead.

Mr. Ballinger: There are a lot of variables involved with this one, and I want to say we seriously looked at this and the implications and ramifications of trying to accept the amendment.

Let me give you an example in my riding. One of the problems or issues that is going to arise out of this when you start talking about it, Bud, with the greatest respect, is that the levy is going to play a major role in this discussion at some point down the road. The concern we have in my riding is this. I have two pits side by side, separated by a boundary road. All the aggregate is extracted on the one side of the municipal boundary, tunnelled under the road and processed on the other side.

Under the act, and as we have all agreed, the best way to solve that issue is that the royalty is paid at the point of extraction. The argument from this municipality now to me, as the parliamentary assistant, is "We're processing it, so we should get some money for that." It was a real concern. All the good stuff we are talking about in this act may get broken down into a monetary debate.

Mr. McLean: What was your reply to that?

Mr. Ballinger: I support the act, where it is at the point of extraction. It is the only way it can be handled.

The problem I foresee, quite honestly, is that the decisions are not going to be based on planning. They are not going to be based on the nonrenewable resource. The decision is going to be made, "Who is going to get the money and why should they get it?" and, "Because they're going to get some money and we may get some trucks, we're not going to support that." That is the problem.

Under the planning process, if that particular site in my riding underwent an additional rezoning or an additional licence application, the minister can refer that to the board and as a neighbouring municipality, it would be notified by law under the Planning Act, and would make representation.

The only comment I would like to make is that I do not know of one aggregate operation in Ontario that has been approved without a hearing.

Mr. McLean: You just made a statement that they would be notified under the Planning Act.

Mr. Ballinger: Under the Planning Act, if they are within 400 feet, they have to be notified; section 35 of the Planning Act, I believe it is.

Mr. McLean: Of the township boundary?

Mr. Ballinger: Of the property boundary, and on a boundary road, they own to the centre of the road.

Mr. Chairman: Would legislative counsel like to speak to this proposed amendment to the amendment?

Mr. Yurkow: I think the discussion has sort of got away from the section. The section has nothing to do with opening up site plans or any of the planning process. All it deals with is a review of whether the licensee is complying with the act. The rest of it is irrelevant.



Mr. Ballinger: It sounded good to me.

Mr. McLean: The adjacent municipality should be notified of that.

Mr. Fleet: Can we put the question, perhaps, Mr. Chairman?

Mr. McLean: On the amendment to the amendment.

Mr. Chairman: Is there any further discussion? I am going to call the amendment to the amendment, which would mean to insert the word "affected" into the amendment I read previously.

Those in favour? Those opposed?

Motion negatived.

Mr. Chairman: I propose to call the amendment now to clause 17(1)(c) as I read previously.

Mr. Ballinger: Repeat the question, please.

Mr. Chairman: The amendment is the NDP amendment which says:

Mr. Wildman moves that clause 17(1)(c) of the bill as amended by the government motion be further amended by inserting after "located" in the second line "and by adjacent municipalities."

Those in favour? Opposed?

Motion negatived.

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Mr. Chairman: We still have to carry clause 17(1)(c). Is that carried?

Carried.

Shall section 17 in its entirety, as amended, carry?

Section 17, as amended, agreed to.

Section 5:

Mr. Chairman: Now we are back to section 5, which is the other open one.

Mr. Wildman moved that section 5 of the bill be amended by adding thereto the following subsection:

"Delayed application

"(4) On and after the third anniversary of the coming into force of subsection 1, this act and the regulations apply to all private land in Ontario."

Mr. Wildman: This was stood down because the parliamentary assistant wanted, for good reason, time to consult and determine whether the government could accept this amendment.

Mrs. Grier: And the answer is?

Mr. Ballinger: Could I have the envelope please, Dale? I want to give some preliminary comments before I give the answer, sort of a roundup.

We reviewed this one in light of what we view as obviously an important position for Mr. Wildman and some of the area he represents. There are several concerns with this particular proposed amendment.

I want to begin by saying that one of the things that is important to me, especially as the representative of an aggregate-affected municipality, is that when the act comes into being the Ministry of Natural Resources support all of the things we have said here in a public process. When we discuss the three-year phase-in in those three areas, we are recognizing the impact it is going to have on budgets and staffing levels not only to be able to carry out the intent of the act but to do it in the manner in which it should be done.

There are many concerns now in Ontario that the Pits and Quarries Control Act, under its present form and under the present administrative structure, is not working in the best interests of the communities. We think with the three-year phase-in and those three additional areas—

Mrs. Grier: We are trying to figure out what he is getting at.

Mr. Fleet: For a small fee I will let you in on it.

Mr. Chairman: Are you nearly at the end of it?

Mr. Wildman: Are you saying no?

Mr. Ballinger: Yes, the answer we are saying is no, and I want to make this point. From our perspective, if we can do what we say we are going to do in the three-year phase-in in those three areas, then I think, Bud, we can properly address the remaining private lands. I think we would be making a big error if we said in here today that within a three-year period we would accept all private lands as designated and then could not fulfil that obligation.

We have said that over the next three years we will phase in three identified areas, mostly contingent upon municipal consultation: In other words, we just do not want to say, "It's done." We want to be able to go out and negotiate and discuss and, quite frankly, prove that this new act will work. We have a commitment as a ministry to make it work.

Mrs. Grier: Is that three years from proclamation, from regulations, from royal assent, from the next election? When do we start counting?

Mr. Ballinger: Dale?

Mr. McLean: That is a political question.

Mr. Wildman: Yes, it is.

Mr. Ballinger: Well, no, it is not a political question. Excuse me. It will be a political decision that will either support or reject the ministry's recommendation, no question about that.

Mr. McLean: It will be a political decision for when the royal assent is given. That will be a political decision.



Mr. Ballinger: I can tell you that when we are finished with clause by clause, it will be going into the House as a government bill for third and final reading. You have my assurance on that, Mr. McLean, or my name is not Bill Ballinger.

Mr. Wildman: My only response, I guess, is that Mr. Ballinger has been hoist with his own petard.

Mr. Ballinger: That has happened before.

Mr. Wildman: In fact, this amendment followed directly from everything that was said by the ministry about the problem of immediately applying this act to all private lands. We were assured that the ministry would be phasing in the application of the act over a three-year period, that there were problems with doing it all at once because there were problems with staffing and financing and budgets and so on. They were going to look at three different areas, the eastern Ontario area, Highway 17 between the Sault and Sudbury and—I am sorry, I have forgotten the other one.

Mr. Fleet: Highway 514.

Mr. Wildman: At any rate, it was going to take place over three years. In moving this amendment, all I did was simply take the intent that was expressed to us and put it in writing. Now to have the parliamentary assistant say, "Well, we don't want it in the act, because although we intend to phase it in, we're not sure we can make it in three years," is to indicate, to me, that we are going to be waiting longer than three years.

Mr. Ballinger: Excuse me, a point of clarification: If that is the way it sounded, I did not mean it that way, Bud. I was not referring to the three years; I was referring to all additional private lands. There is no point in saying "all private lands" here today and agreeing and accepting that amendment if in fact we could not do it.

As far as the three-year commitment is concerned, it is there, we are going to shoot for that goal and we are going to achieve it.

Mr. Wildman: I am very sincerely disappointed that the government has decided this. For a number of years now I have been pressing the minister for the amendment of the act that we have just gone through, and sincerely pressing for it, because not just me but a number of members and people across the province have recognized the inadequacies of the Pits and Quarries Control Act and have wanted to have change.

One of the other reasons I have been particularly pressing for this is the fact that we in northern Ontario, as well as some other parts of the province, are not now designated and, I think, do not have proper controls of aggregate extraction. As more and more aggregate is required in southern Ontario and more of it is mined in this part of the province, I think they are going to be moving more and more into eastern and northern Ontario to get aggregate. I am most disappointed that, after pressing all these years for amendments to the act and for the act to cover the whole province, we cannot even get a delayed commitment in the act for its application to the whole province.

Mr. Chairman: To be clear, I am going to read into the record the proposed amendment. It is a proposal to put a subsection 5(4) and it reads as follows:

"(4) On and after the third anniversary of the coming into force of subsection 1, this act and the regulations apply to all private land in Ontario."

Those in favour? Opposed?

Motion negatived.

Section 5 agreed to.

Mr. Chairman: Mrs. Grier wanted to comment on another matter.

Mrs. Grier: I wanted to find some way of ensuring that this bill would be one of those to which the intervenor funding pilot project legislation would apply at hearings for the Ontario Municipal Board under this act. I guess we await your direction as to how best to accomplish that, whether as a section to this legislation or as a—Well, I think the way to do it would be to insert a section saying that hearings before the Ontario Municipal Board under this act would be subject to that piece of legislation.

Mr. Chairman: I would like to ask for a legal opinion on this and then comment from the parliamentary assistant.

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Mr. Yurkow: I think you would have to add a provision similar to what Mrs. Grier suggests. Otherwise you would be attempting to amend the other legislation in this act, and it would appear to me to be outside of the principle of this act, but I think wording similar to what Mrs. Grier suggested would at least put the issue. I do not have in mind any specific wording. I am not familiar with—

Mr. Ballinger: Bill 174.

Mr. Yurkow: —the other act, so I cannot comment on how the wording would fit.

Mrs. Grier: I would move that a section be added to this bill to the effect that Bill 174, the Intervenor Funding Project Act, apply to hearings before the Ontario Municipal Board under Bill 170.

Mr. Chairman: There are two things involved here. First, I need an opinion on this again. If this is changing a principle of the act, I cannot accept the motion. If I can accept the motion, I have to have it in writing.

Mrs. Grier: Are you going to rule first on whether you can accept it?

Mr. Chairman: I do not know whether I can accept it. I do not know whether it is changing the principle of the bill.

Mr. Yurkow: In my view, I think it is going beyond the principle of this act. It is an added section, something that was not in there during second reading. Ultimately, I guess, it is the chairman's ruling, but my personal view is that it goes beyond the ambit of the bill.

Mr. Ballinger: We discussed at lunch, as we said we would, the intent of Mrs. Grier's proposed motion. We think, quite frankly, it is even in conflict with Bill 174 itself, which is a pilot project that is quite specific



about the types of hearings where intervenor funding will be allowed, and the Ontario Municipal Board is not one of them. Although I understand the intent, Mrs. Grier is really proposing something that is contrary to the act itself. I am not a lawyer, and maybe we can get David Searle to speak to that from a legal point of view, but in the discussions we had in reviewing Bill 174, Bill 174 is quite specific as to the type of hearings where intervenor funding is provided for by the government.

For three days we have all said we are not lawyers. How come I feel like a lawyer?

Mr. Fleet: I am inclined to agree. I think the amendment would be appropriate if we had Bill 174 before us. We would be amending it to expand the scope of that act. I really do not see how you can fit it under this, although it is a good try.

Mr. McLean: How do you know the act does not cover it now?

Mr. Ballinger: With the greatest respect, the legal opinion we have—Legal counsel is here, the legislative counsel.

Mr. Fleet: If she thought it was covered by it now, she would not be moving this amendment.

Mr. Ballinger: It specifies the environmental and the other types of hearings. The Ontario Municipal Board is not one that is mentioned.

Mr. Chairman: On the basis of the discussion to this point, I am going to rule that I cannot accept this amendment because it is changing the intent of Bill 170 that is before us.

Mr. Wildman: We will not challenge your ruling.

Mr. Chairman: The other tidy-up item I have to do is to now ask if Bill 170, as amended, will carry.

Bill 170, as amended, ordered to be reported.

Mr. Wildman: Mr. Chairman, I would like make a comment. I appreciate the excellent job you have done in chairing the sessions we have had on this bill.

Mrs. Grier: Hear, hear.

Mr. Wildman: I also want to congratulate the members for going through a long-drawn-out process in dealing with a lot of amendments, and to thank the staff of the ministry on my behalf for their work in doing this bill. I have enjoyed it. I think it has been useful. I will not belabour this, but I regret the fact that I have worked, as the member for Algoma as well as a member of the Ontario Legislature, on a bill that will not apply to my area.

Mr. Fleet: Yet.

Mr. Ballinger: I want to say, on behalf of the minister, that this bill has been some 15 years in the making. I really want to take this opportunity as well to thank the staff for the excellent guidance they have given all members of the committee, but more specifically to thank the members of the opposition for participating in a fair manner to deal with the government proposed legislation.

Mrs. Grier: Constructive.

Mr. Ballinger: Constructive. Thank you. I really want to thank Bud, obviously, as the Ministry of Natural Resources critic for the official opposition and say on record that we seriously looked at your proposed amendment. We knew how important it was to you and I would like to say to you that I hope that at the end of this three-year period we have done what we said we would, and can be in a better position to accommodate your concerns and your needs in your local riding.

As you know, we have some Management Board approval to seek yet as it relates to some additional staff members and budgets. There will be lots of members of all parties saying, "There go some more employees on the government payroll," but this is one particular area of the government where it is necessary for us to have them to carry out the intent of the bill.

As well, Mr. Chairman, you are doing a great job. Thank you very much.

Mr. McLean: I would certainly like to take the opportunity to thank the ministry for its co-operation during this process. I think they were worthwhile committee hearings. It is a bill that I and the municipalities of this province are concerned about. We still have concerns with it. However, I hope it works out for the best and is implemented in a way that people will be satisfied with. I hope it is something that can be amended in the future with regard to the concerns people have raised that were not addressed. I am referring mainly to the municipalities and some of the extra things they would like to see in it. Perhaps that can be looked at, at a later date.

I think the hearings went well and I commend everybody for their co-operation.

Mr. Chairman: If I could take a moment, as the chairman, to say a few words of thanks, too, this has been a fairly exciting sequence of events for me. I never expected, as chairman of the standing committee on general government, that we would be considering an act such as the Aggregate Resources Act, which I have a great deal of interest in, in my own riding.

I would like to thank people on the committee, particularly people like Mrs. Grier who very adequately expressed my concerns relative to the environment and other matters she knows I am interested in, and to underline the fact that I have tried to be impeccable as far as neutrality goes with respect to chairing the committee.

Mr. Ballinger: He dumped on me a few times.

Mr. Chairman: Because of things being funnelled into a process that was relatively short, it took a lot of co-operation. I appreciate the co-operation by all of the committee members, supporting staff from the ministry, our legal counsel and others, because without the co-operation of everybody we could not have done the thing in the time frame we have done it in. I feel very good about that.

Mr. Wildman: I meant in my earlier comments to say thank you to legislative counsel for his assistance in preparing amendments. Any time you get into a bill with as many amendments as were put forward by the government and the opposition on this one, you do often run into the problem of getting lost in paper or not knowing how to cross-reference things. We did not run into that on this committee, and I think that is largely due to the work done by legislative counsel.



Mr. Chairman: Any further comments by the committee? The committee stands adjourned until such time as we are reconstituted and called to meetings by people higher up the chain than we are.

The committee adjourned at 4:30 p.m.













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